

MAINE STATE LEGISLATURE

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

Volume III

Second Regular Session

March 24, 2010 - April 12, 2010

Appendix
House Legislative Sentiments
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Pages 1215-1836

Encourage the Use of Models in the Collection and Use of Student Achievement Data" (EMERGENCY)

(S.P. 704) (L.D. 1799)

Signed:

Senators:

ALFOND of Cumberland
SCHNEIDER of Penobscot
WESTON of Waldo

Representatives:

SUTHERLAND of Chapman
CASAVANT of Biddeford
WAGNER of Lewiston
LOVEJOY of Portland
NELSON of Falmouth
RANKIN of Hiram
RICHARDSON of Carmel
JOHNSON of Greenville

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:

Representative:

FINCH of Fairfield

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-483)**.

READ.

On motion of Representative SUTHERLAND of Chapman, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-483)** was **READ** by the Clerk and **ADOPTED**.

Under suspension of the rules the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-483)** in concurrence. **ORDERED SENT FORTHWITH.**

Majority Report of the Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-485)** on Bill "An Act To Implement the Recommendations of the Advisory Council on Health Systems Development Relating to Payment Reform"

(S.P. 735) (L.D. 1819)

Signed:

Senators:

BOWMAN of York
ALFOND of Cumberland
McCORMICK of Kennebec

Representatives:

TREAT of Hallowell
GOODE of Bangor
RICHARDSON of Warren
LEGG of Kennebunk
WEAVER of York
MORRISON of South Portland
BECK of Waterville
BEAUDOIN of Biddeford

PRIEST of Brunswick

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-486)** on same Bill.

Signed:

Representative:

FOSSEL of Alna

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-485)**.

READ.

On motion of Representative TREAT of Hallowell, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-485)** was **READ** by the Clerk and **ADOPTED**.

Under suspension of the rules the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-485)** in concurrence.

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

HOUSE DIVIDED REPORT - Majority (7) **Ought to Pass as Amended by Committee Amendment "A" (S-424)** - Minority (6) **Ought to Pass as Amended by Committee Amendment "B" (S-425)** - Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Clarify Safety Requirements in Acadia National Park"

(S.P. 666) (L.D. 1737)

Which was **TABLED** by Representative HASKELL of Portland pending **ACCEPTANCE** of either Report.

Subsequently, on motion of Representative HASKELL of Portland, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-424)** was **READ** by the Clerk.

Senate Amendment "A" (S-459) to **Committee Amendment "A" (S-424)** was **READ** by the Clerk and **ADOPTED**.

Committee Amendment "A" (S-424) as Amended by **Senate Amendment "A" (S-459)** thereto was **ADOPTED**.

Under suspension of the rules the Bill was given its **SECOND READING WITHOUT REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-424)** as Amended by **Senate Amendment "A" (S-459)** thereto in concurrence. **ORDERED SENT FORTHWITH.**

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

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment Friday, March 26, 2010, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

HOUSE DIVIDED REPORT - Majority (7) **Ought Not to Pass** - Minority (6) **Ought to Pass as Amended by Committee Amendment "A" (H-688)** - Committee on **LEGAL AND VETERANS AFFAIRS** on RESOLUTION, Proposing an Amendment to the Constitution of Maine To Amend the Requirements Governing Direct Initiatives

(H.P. 1193) (L.D. 1692)

TABLED - March 11, 2010 (Till Later Today) by Representative TRINWARD of Waterville.

PENDING - Motion of same Representative to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

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

Representative **CAIN**: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. This is a bill that I proudly brought forward to the Legal and Veterans Affairs Committee. I do recognize that it is a constitutional amendment. I do recognize that that requires a two-thirds vote of the House and the other body before going to the people for affirmation, but I think it's a point that is not to be missed during this legislative session and that's why I rise today.

Maine has been privileged with the citizen initiative process for nearly 100 years, and I would say, by enlarge, it has served us very well. It enables people to bring ideas forward no matter what they are, to put them before the people, to have a public debate, have them voted on and brought to the Legislature. It's a process that I believe in, but it's a process that I think is ripe for an opportunity to be improved and that's what this bill seeks to do.

This bill would ask the people of Maine to amend the Constitution so that it would say that when you bring forward an initiative, you not only must determine through the Office of Fiscal and Program Review what that bill would cost or what it would save, but if it was going to cost the state money, as part of your legislation you'd need to identify a funding source. Now this does not change the role of the Legislature. If you put forward a bill that sought to raise a certain revenue to pay for it, when it comes before the Legislature after it's been passed by the people, the opportunity for the Legislature to amend that bill in any way remains. This is not a new concept. Several states already require in their constitution that initiative proposals be fully funded. States like Arizona, Mississippi, Missouri and Nevada.

I was even more bolstered in my support for this concept last year after an article entitled "Exercise the Power, Play by the Rules: Why Popular Exercise of Legislative Power in Maine Should be Constrained by Legislative Rules" was published last year in the Maine Law Review by a former member of this body, the Honorable Jeremy Fischer. That article really brought home for me that this not only should be what we do but that it really is a better way for the citizen initiative process in Maine to be run. Just like when any of us bring forward any piece of legislation, we must identify a funding method that pays for our proposal to make sure our budget stays in balance.

Perhaps the greatest example of this in my short time, my six years in the Legislature, was during my first term when I, like many of you, we were elected for our first term on the heels of the 2004 June election related to 55 percent of the cost of education. We came in and in a very intense beginning of a very tough session, we had a select committee that quickly worked to identify how we were going to meet the challenge of 55 percent, and the word challenge may not be strong enough at this time that we knew then what was before us. If that referendum had included a funding source, it would have been a more honest choice for the people of Maine, as they would have considered not only what we wanted the state to pay for for education, how it

would go back into property taxes, but that they would be assured that the Legislature would have no excuse when that would come before them the next session because a funding source could have been identified. It would have been a more fair and honest choice for the people of Maine to vote for that amendment knowing full well how it would be paid for. And instead, here we are nearly six years later not having met that obligation, going door-to-door, being in our districts, having that hung over our head left and right. I contend that it was not a fair question to begin with and I contend that this Legislature, that Legislature, any Legislature would have more opportunities to address the concerns of citizen initiatives if they were presented in a way that was more consistent with the legislative process by recognizing the fiscal impact and trying to address it.

I believe this change would strengthen the citizen initiative, not bring it down. I believe that it would in fact lead to greater transparency and accountability, not only for the Legislature who would deal with those referendums that were successful, but also for those initiators, regardless of what they want to put forward. I think if you have a good idea, you should be willing to say I have a good idea and I'm willing to accept and pay for what that idea would cost. It is that that inspired my bill, it is that reason that I stand before you today on what is a Divided Report, on what is a very high threshold for votes, and I would ask your consideration. I would ask your consideration for transparency, for fiscal responsibility and for the sake of the good ideas out there that deserve to not only be passed into law by the people but actually come to fruition in the Legislature, and I believe this would approve that in the end. Thank you, Madam Speaker.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Valentino.

Representative **VALENTINO**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I rise today to oppose the current motion on the floor. The Majority Report was Ought Not to Pass on this. I want to thank the good Representative from Orono for bringing this forward. Last year, she brought forth a similar bill, LD 235, which meant that a citizen initiative had to put on the top of the ballot how much it would cost if this went through. Although it was felt by the committee that this is the second part to say not only how much does it cost, where are we going to get the money for it, I feel that the unintended consequences on this bill are huge.

First of all, when we submit our bills, we do not have to put where we're going to get the money to pay for it. We submit a bill, we submit an idea, and if the committee passes it then a fiscal note is drawn and attached to it. That fiscal note then has to go to the Appropriations. We ourselves, as sponsors, do not say I want this to pass into law and this is how I'm going to pay for it. If we don't ask that of ourselves, how are we going to ask that to the citizens of Maine, who are not up here and are not familiar with the budget process, to have them do that? The unintended consequences of this, I can see very clearly. People might put in do you want to reduce the income tax to 4.5 percent and in order to do that, we're going to cut 2,000 state employees who have an average salary of \$37,000. The argument is saying, well, we don't have to be bound to that. Once we get it up here, we can do what we want. Well, why are we asking the citizens to put in something if we're not going to be bound for it? What if they put in we're going to eliminate the salaries of all the State Representatives? We're a citizen legislature. Why not be for free and have nothing being paid for us? Why not finally consolidate that natural resource agency that everybody's been heard out, let's lower the income tax and do that. I could go on and on and on, on examples that the citizens might come up that is not in the best interest of all of the people of the State of Maine.

I also raise the question when we put out an issue on a referendum, it only has to contain one issue not two. What if somebody wants to lower the income tax to 4.5 percent but they don't want to lay off 2,000 state workers. Are we asking them one question or are we really asking them two questions? Does that meet our constitutionality of referendums on having two questions or is it one question on that? I don't know.

I also know that the citizens do not have available the tools to do this that we do here. We do not ask ourselves to do this on our bills, how can we ask them? I also know that this is a constitutional amendment, one that should not be taken lightly. A constitutional amendment, just last year, to allow city clerks additional time on elections to process ballots failed, failed just to give them a few more days. Do you want this constitutional amendment to go out there against the citizens of Maine saying if you want to do this then you have to come up with the numbers? I would urge you to vote this down. I hope that the caucus will see that it may have had a good intent but the unintended consequences are huge on this and do we really want all these citizen initiatives to come back with an amount that we know we are not going to do as far as the reductions in funding, or the increases in the sales tax, or however else they decide to duns it. So I urge you to vote against the Minority Ought to Pass and please vote for the Majority Ought Not to Pass. Thank you.

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

Representative **CAMPBELL**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. Representative Valentino said she could go on and go on and go on, but I'll continue on for her. She evidently forgot about the good citizens of Maine when we passed the beer and wine tax, and then set up a soda pop. The soda pop people spent hundreds of thousands of dollars to pay for signatures, not go grassroots, to pay for them, and then the beer and wine distributors spent around \$4 million to kill a bill. So she should stop and think about we're trying to probably stop that, that you don't need legislators to pass laws when the people with the money out there can turn around and spend enough money to kill whatever we do up here. I hope she remembers that. And any of the freshman that didn't know about it, they know about it now. Thank you.

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

Representative **RUSSELL**: Thank you, Madam Speaker. Madam Speaker, Ladies and Gentlemen of the House. I rise today in opposition to the pending motion, primarily for a couple of reasons. One, we passed a really good bill today, under the hammer as I recall, that addresses many of the reforms that I believe are important for the citizen's initiative process, and I think we've taken a major step forward this year. And I think we need to be very cautious about what we do going forward and we need to protect the right of the citizens to petition their government. I'd like to point out that the good Representative from Orono, I share her concerns. I really do. I share the concern that people can put forth initiatives that are asking us to fund things that we don't necessarily have a context of how we're going to fund. But this is a statutory process. We're not like California. We don't have a constitutional referendum. We have a citizen's initiative and it's a statutory referendum and so our Constitution allows this Legislature, this body, to make decisions about what the citizens put before us. It's perfectly within our right. We don't like doing it and I certainly don't encourage us to do it, but it's well within our rights that if a citizen's initiative passes at the ballot box, we can change it, we can gut it, we can do just about anything we want to it. The citizen's initiative does

not have the right to bind a future Legislature any more than we do. We cannot bind a future Legislature. So I would be very cautious about passing a constitutional amendment that gives us a right that we already have.

The other thing I'd like to point out is that when we talk about the funding mechanism, we're talking about the direct initiative, not the citizen's veto, and the funding is related to how to fund that program, that idea, that cut. It's not related to how to fund the referendum process. So to the good Representative from Orono, I really share her concerns and I'd love to find a solution and work with her, but I just don't feel that this is the solution that we should be looking at today. And I have to say, again, we passed good legislation this morning, the other body has passed it, it's probably going to be signed into law that addresses fraud and addresses many of the reforms that some of us are very deeply concerned about. We have a responsibility to legislate, we also have a responsibility to protect the people's right to petition their government and if I were a citizen in the State of Maine, I would not be voting on a constitutional resolution that would limit my right to petition my government. Thank you very much, Ladies and Gentlemen. Thank you, Madam Speaker.

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

Representative **CAIN**: Thank you, Madam Speaker. Just three quick things. Number one, this bill does not amend the law of unintended consequences. That law will stay in effect for as long as all of us will live and well beyond us. I wish we could amend that law, but it's not true. The second, there was a question about the fiscal side and where it would be determined. It would be using the same staff we use here in the Legislature, in OFPR. And to clarify that, certainly the laws we pass are certainly statutory. The process, however, originates from the Constitution, which is why it's here. Finally, Madam Speaker, I request a roll call.

Representative **CAIN** of Orono **REQUESTED** a roll call on the motion to **ACCEPT** the Minority **Ought to Pass as Amended Report**.

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

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

ROLL CALL NO. 327

YEA - Beck, Berry, Blanchard, Cain, Campbell, Carey, Casavant, Cohen, Connor, Crockett P, Duchesne, Flaherty, Flood, Haskell, Hinck, Hogan, Innes Walsh, Kaenrath, Kent, Lajoie, Martin JR, Martin JL, Miller, Millett, Peoples, Pieh, Piotti, Priest, Rankin, Rotundo, Sanborn, Sirois, Sutherland, Theriault, Treat, Trinward, Wagner J, Wagner R, Watson, Webster, Welsh, Wright, Madam Speaker.

NAY - Adams, Austin, Ayotte, Beaudette, Beaudoin, Beaulieu, Bickford, Blodgett, Boland, Bolduc, Browne W, Bryant, Burns, Butterfield, Cebra, Celli, Chase, Clark H, Clark T, Cleary, Cotta, Crafts, Crockett J, Curtis, Cushing, Davis, Dill, Dostie, Driscoll, Eaton, Eberle, Edgecomb, Finch, Fitts, Flemings, Fletcher, Fossel, Gifford, Gilbert, Goode, Hamper, Hanley, Harlow, Harvell, Hayes, Hill, Hunt, Johnson, Jones, Joy, Knapp, Knight, Kruger, Langley, Legg, Lewin, Lovejoy, MacDonald, Magnan, Mazurek, McCabe, McFadden, McKane, Morrison, Nass, Nelson, Nutting, O'Brien, Pendleton, Peterson, Pilon, Pinkham, Plummer, Pratt, Prescott, Richardson D, Richardson W, Robinson, Russell, Sarty, Saviello, Schatz, Shaw, Stevens, Strang Burgess, Stuckey, Sykes, Tardy, Thibodeau, Tilton, Valentino, Van Wie, Weaver, Willette.

ABSENT - Briggs, Cornell du Houx, Cray, Eves, Giles, Greeley, McLeod, Percy, Perry, Rosen, Smith, Thomas, Tuttle, Wheeler.

Yes, 43; No, 94; Absent, 14; Excused, 0.

43 having voted in the affirmative and 94 voted in the negative, with 14 being absent, and accordingly the Minority **Ought to Pass as Amended** Report was **NOT ACCEPTED**.

Subsequently, on motion of Representative TRINWARD of Waterville, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

SENATE DIVIDED REPORT - Majority (9) **Ought to Pass as Amended by Committee Amendment "A" (S-455)** - Minority (4) **Ought to Pass as Amended by Committee Amendment "B" (S-456)** - Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Promote the Establishment of Innovative Schools" (EMERGENCY)

(S.P. 706) (L.D. 1801)

- In Senate, Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-455)**.

TABLED - March 25, 2010 (Till Later Today) by Representative SUTHERLAND of Chapman.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

Representative SAVIELLO of Wilton **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** 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 Biddeford, Representative Casavant.

Representative **CASAVANT**: Thank you, Madam Speaker. I would like a chance to just talk to everyone about the Minority Report if I can. I spoke to you last year about this same particular issue and things have changed dramatically since then. The Race to the Top funds, which we're all aware, is looking for certain types of innovation. I believe the charter schools can deliver that type of thing, something that the traditional public school cannot. I want to be clear. Charter schools are not private schools, they are not religious schools. They are public schools that have openings for anyone who wants to go there. But the idea is to attempt to eliminate those kids that fall through the cracks and many of you who are teachers or have been teachers clearly know who I'm talking about. The kids that you can't reach no matter how hard you try and you know they're gifted, you know they're smart, but for whatever reason, the dynamic of the classroom doesn't work for them. I believe in my heart that charter schools are an option for them.

Now for some reason there's much opposition. Seventy years ago, Franklin Roosevelt said, we have nothing to fear but fear itself. Pat Paulsen, in 1968, said, we have nothing to fear but fear itself, and the boogeyman. In the State of Maine, seemingly, the boogeyman is charter schools and I have no idea why. When Roosevelt was dealing with the Great Depression, he had no master plan. His goal was try anything. Charter schools are not the silver bullet. I'm not going to tell you that scores are going to go up and I'm not going to make any of those promises, but they give people a chance for alternative free choice. I've received countless emails and countless phone calls the last week or so with people whose kids were jeopardized by the system. They told me stories how their kids were successful in the private schools with which they paid tuition. You probably

know people yourselves who took their kids out of schools and put them somewhere and paid for it. Well, why can't those who can't afford it also be allowed free choice to put their children at a public charter school where innovation and alternative styles of teaching can take place? In all the arguments that I heard last week and the week before against charter schools, there's something that struck me. Not a single argument talked about what was best for the children, talked about loss to various districts because ideally the money follows a child. So if a student is at a public school and suddenly wants to go to a private school, the money follows that child and people are scared of that because it might affect their district. But here's the catch: Those schools, those charter schools are designed to try to attract the kids that drop out, the ones who never really materialize in terms of money for the district.

What I ask you is to reject the Majority Report and go on record with the Minority Report saying that we, as a state, believe that innovation is our goal for all students in the State of Maine, no matter what their economic standing, and we can do that through the use of charter schools. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Stockton Springs, Representative Magnost.

Representative **MAGNAN**: Thank you, Madam Speaker. Madam Speaker, Representatives of the House. I stood last year to speak against charter schools and I will do it again and I will speak in favor of the innovative schools. I think that is the way for us here in Maine to go. At a recent NCSL education leadership workshop, I found out that charter schools are kind of declining because they're not living up to the potential that they were touted to be. As usual, something that's overly relied upon for wonderful results only gets the wonderful results through cherry picking and through location. So if you are a suburban, well-to-do area school and you want to put a charter together, you're going to get pretty good results on your tests. If you're an inner city charter school and you clearly reflect the neighborhood and your clientele, including special needs students, you don't do any better on the whole than the regular schools. And so this problem of the charter schools is real.

It also extends into the issue of who controls the schools. We've now passed data collection on students from birth to practically death and that was a shame but it's happened. We now have adopted common core standards. Many states have gone to state run school boards, some with a little bit of disastrous results such as Texas, but the problem is that charter schools feed into that consolidation towards state control in a grants way because they don't report to their local school boards the way the innovative schools would. They report to the state Department of Education, pulling together the charter schools under the state. And so I would be careful in sanctioning charter schools and I will talk about the kids because we treat our kids very well. In most studies you'll find on the national level people talk about schools, generally they say, oh, the schools need this, the schools need that, they're underfunded, they're overworked, and the kids aren't doing well. But when asked specifically about their own schools, even some of the toughest schools in the country will clearly report that they're very proud of their school. It's not their school. Their school is doing the best they can with the most they have with whatever they have, and so I don't believe for a minute that the charter schools are going to be a cure all or even a real alternative to our young children and our young adults in the State of Maine. It does draw public money away from the public schools in a way that the innovative schools will not. Let's give those innovative schools a chance and not have unfair competition.

I'm going to say one last thing here. No, I think that's about it.