

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Nineteenth Legislature
State of Maine

Volume 2

First Regular Session (Continued)
May 6, 1999 to June 18, 1999

Pages 747 - 1547

On further motion by same Senator, the Senate **RECONSIDERED** whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-292) AS AMENDED BY SENATE AMENDMENT "A" (S-322)** thereto.

On further motion by same Senator, Senate Amendment "A" (S-358) **READ** and **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-292) AS AMENDED BY SENATE AMENDMENT "A" (S-322) thereto, **AND SENATE AMENDMENT "A" (S-358)**, in **NON-CONCURRENCE**.

Sent down for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act to Strengthen the Maine Taxpayer Bill of Rights"
H.P. 1565 L.D. 2216

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

RUHLIN of Penobscot
DAGGETT of Kennebec
MILLS of Somerset

Representatives:

GAGNON of Waterville
GREEN of Monmouth
DAVIDSON of Brunswick
COLWELL of Gardiner
STANLEY of Medway
LEMOINE of Old Orchard Beach
MURPHY of Berwick
BUCK of Yarmouth
CIANCHETTE of South Portland

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-704)**.

Signed:

Representative:

LEMONT of Kittery

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

On motion by Senator **RUHLIN** of Penobscot, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

Off Record Remarks

Senator **GOLDTHWAIT** of Hancock was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (5/10/99) Assigned matter:

HOUSE REPORT - from the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act to Implement the Tobacco Settlement"

H.P. 687 L.D. 943

Report - **Ought to Pass as Amended by Committee Amendment "A" (H-448)**

Tabled - May 10, 1999, by Senator **PINGREE** of Knox.

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-448)**, in concurrence

(In House, May 7, 1999, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-448)**.)

(In Senate, May 10, 1999, Report **READ** and **ACCEPTED**, in concurrence. **READ ONCE**. Committee Amendment "A" (H-448) **READ**.)

On motion by Senator **HARRIMAN** of Cumberland, Senate Amendment "A" (S-247) to Committee Amendment "A" (H-448) **READ**.

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

Senator **HARRIMAN:** Thank you very much Mr. President. Ladies and gentlemen of the Senate, good evening. I offer

Senate Amendment "A" tonight for your consideration on the basis that the tobacco settlement that is nearing completion throughout the Country is in the next year or so going to end up in the State checkbooks in many States including Maine. As you probably are aware, we are debating the best uses of those funds in the name of smoking related illnesses, both past and present. The Amendment I present to you tonight makes it clear that the use of the funds from the tobacco settlement can only be expended for health related purposes only. Thus assuring that in Legislation we are memorializing that road improvement or tax relief or other unhealth related uses would not be permitted. Thank you Mr. President.

On motion by Senator **HARRIMAN** of Cumberland, Senate Amendment "A" (S-247) to Committee Amendment "A" (H-448) **ADOPTED.**

Committee Amendment "A" (H-448) as Amended by Senate Amendment "A" (S-247) thereto **ADOPTED**, in **NON-CONCURRENCE.**

Under suspension of the Rules, **READ A SECOND TIME.**

Senator **BENNETT** of Oxford requested a Division.

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

Senator **MILLS:** Mr. President, men and women of the Senate, before we vote on this issue I'd like to draw to your attention some of the things I think are significant and may give you pause about approving the settlement agreement that is articulated in this agreement. I for one had great doubts about the social propriety of entering into a settlement agreement with the tobacco manufacturers and had considerable doubts about the background of that litigation in the first instance. I won't take much time but let me just give you a quick sketch of what my concerns are. When this money was made available to us it was given not in compensation for the losses that had accumulated to date, though that was the foundation of all the law suits that were brought in the various States that brought it. But it is money that is to be paid in perpetuity, as in essence a license for immunity under the laws of this state. And while that might be something which the Legislature, I suppose in it's wisdom, might agree to, it certainly is entirely without precedence to deal in this fashion with a corporate entity or any group of corporate entities. And it is entirely remarkable in our nation's history, I believe, that a single individual, the Attorney General of this State or any Attorney General, would have the power with his signature alone to enter into an agreement with any corporation that grants them immunity from our laws in perpetuity forever. I've always thought that granting immunities to people was a Legislative function and that we would have the option at some stage of Amending or retracting it or changing it. Under this agreement I don't know if we do or not. But there is this 150 page agreement that was circulated throughout the United States on about three days notice and the Attorney General of this State and all of the other States, except those who had previously signed similar agreements, the 46 remaining States all signed this agreement and granted these four corporations permanent immunity from certain consequences from selling their products to our State. I had never understood that that was within the scope of the litigation brought by the Attorneys that were managing it and I

certainly never comprehended in my lifetime that one individual in this State would be vested with such truly extraordinary power.

I know that this was broadly celebrated as kind of a victory over a bad industry or whatever you want to call it and that we should all relish the receipt of this largess. But if it was money that we wanted out of these corporations we could do quite simply what we had done the year before, we raised the tax. We put a 37¢ tax on cigarettes in the year before and got about the same amount of money and probably more because we don't know how much of this money, this settlement money, may have to be remitted to the US Government under rules currently in place that would require that remittance. I had serious problems about it. I also, as a trial lawyer, have serious misgivings about having social policy in perpetuity manage outside the public sector by litigants and having members of my own profession profit not only from the damages or the very small amount of damages that were in the past that they were suing for but having fees that were based on something which is in essence a tax in perpetuity. It really bothered me. I think it terrible in the public sector. I don't think it gave my own profession a reputation that I'm particularly proud of. I have serious reservations about this mode of setting public policy. I might say to you that it is one of the reasons that I had misgivings about permitting other governmental entities in this State from suing other manufacturers such as gun manufacturers. I think that when we license State or Governmental entities to hire lawyers to go out and sue corporate entities that's one thing, but when the settlement results in the reformulation of significant social policy in perpetuity it scares me significantly and I think it's an inappropriate way of using the courts which are not designed to set social policy. That's our job in this Chamber. We get paid the big bucks to do that and we should reserve those privileges to the Constitutionally appointed repositories of that power, namely the Senate and the House. For that reason I would be voting Against the pending motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE:** Thank you Mr. President. Men and women of the Senate, I just want to be clear about this. This item is merely our language to set up the fund so that we can accept the tobacco money. It is not a different piece of legislation that has a lot of criteria for what may or may not happen. This is a very simple piece of legislation that all States are required to do but allows us to accept the money that we have already won in the law suit. I find this sort of undebatable but I wanted to make that statement and make sure that everyone was clear that this was essential for us to do and hope that you will all vote in favor of this particular motion.

At the request of Senator **BENNETT** of Oxford a Division was had. 15 Senators having voted in the affirmative and 13 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-675) AS AMENDED BY SENATE AMENDMENT "A" (S-247)** thereto, in **NON-CONCURRENCE.**

Under suspension of the Rules, ordered sent down forthwith for concurrence.