

MAINE STATE LEGISLATURE

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After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act to Repeal the Sales Tax on Snack Food Except Candy and Confections"

I.B. 6 L.D. 2602

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-1014) (11 members)

Minority - Ought to Pass as Amended by Committee Amendment "B" (H-1015) (2 members)

Tabled - April 4, 2000, by Senator **RUHLIN** of Penobscot.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1014)** Report, in concurrence

(In House, April 3, 2000, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1014)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1014).**)

(In Senate, April 4, 2000, Reports **READ**.)

On motion by Senator **MILLS** of Somerset, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **MILLS:** Mr. President, if I may just briefly with regard to this Bill. When the Tax Committee that I serve on presently, which most members currently serve on, when we gathered for the first time 4 years ago we had an extensive series of sessions in which we met in retreat over across the river and had people come from NCSL. We had economists speak to us. We had professors from the University of Maine. We had literature. We had access to various tax policy studies and a great deal of information about what goes into the makeup of sound tax policy. If there was one message that was iterated over and over and over again, it was that, in general terms, the sales tax structure of the various states in the United States is, in many respects, all together too narrow and thus too volatile, and that Maine's sales tax stood out as being too narrow and too volatile above all others. We don't tax enough products and, for that reason, our sales tax has to be too high. When times are bad, the sales tax plummets to a degree that outstrips the decline of the economy. When the economy is great, as it is right now, the sales tax goes bounding up out of control and produces revenue of unexpected

proportions. There is a remedy for all of this, and a single remedy, one remedy only, and that is to spread the base of the sales tax to as many products and services as possible so that the tax, first of all, may be allowed to do its proper job of raising revenue and that it may raise that revenue in a steady fashion less susceptible to the slings and arrows of the economy.

I'm told by those who were present in 1991 for the adoption of this snack tax, that it was done, not as a gimmick, not as a temporary measure, not as an emergency provision, although Lord knows they needed the revenue at that time, but it was done by most members as a very conscious effort to remedy, or approach a remedy, to this grotesque deficiency within our sales tax code. Most of the people who supported it on the Taxation Committee at that time, regarded it as a permanent broadening of the base of the sales tax that was based on sound policy. Now what is that policy? We do have a policy in this state against the taxation of food. We don't tax grocery staples. We never have. But we do tax restaurant food. We tax prepared food. We tax any food that you can get at a McDonalds or a Burger King or a Pizza Hut. We tax any food that is handed to you over the counter, ready to eat. The policy problem that was confronted by the people on the Taxation Committee in 1991 was that there are certain forms of food that have packaging around them that are ready to eat, that are consumed often times at places like Burnsies, where you may go to the counter with a request for some hot food off the griddle which is certainly taxed and then in your hand you may have a package of muffins or something like that, which at that time, was not taxed. And so, there was a desire to bring our food taxation policies into conformity with each other. And for that reason, what was then an apparent confusion about how to tax food, was regarded as being cleared up in some measure by passage of the snack tax, which produced a uniform state policy on the taxation of food substances. Namely, that if the food is prepared, ready to eat, and comes over the counter in that form, then it should be taxed. Is it uniformly applied? Is it perfectly applied? Is the line cleanly drawn? No, but it's as cleanly drawn perhaps as taxation policy or rule making permits in any area like this. Now it's true that when you go to Burnsies and you want to buy your lunch there, you are taxed on almost everything that you take out of that store. So there's uniformity in that sense. Ever since the snack tax was passed, we've had lobbyists in Augusta who try to tell us that there is a popular groundswell for repealing it because it was regarded as a temporary tax and a gimmick. The Bangor Daily News recently ran a poll to see if that was true and found that the public, at least, was about evenly divided, 46% for repeal and about 40% against, and a number of people, perhaps 14%, undecided. We held a public hearing on this Bill over at the civic center in anticipation that there might be such a crowd show up that we would need the seating capacity of a large room. Well, we could have held the hearing, easily enough, in our usual space. There was not great, popular, hue and cry. There were no great numbers of people showing up to call for the repeal of this tax, and indeed, the editorial opinion around the state has largely been supported of retaining the tax. You have some of that being handed out to you at this point.

It turns out, as you will note from the pink sheets that are being handed out to you, that the entire effort to gather signatures for this, so called, citizen's petition was paid for by the Grocery Manufacturers Association and the Pepsi-Cola Company at a cost of around \$43,500. The money came from Wisconsin Avenue in Washington D. C. The entire effort, all of the signatures were bought and paid for. You'll find on the back of

the pink sheet an expenditure for \$20,800 that was paid to the signature gatherers that stood outside of grocery stores saying, "oh by the way, would you like to be relieved of a sales tax on snacks?" And, of course, a certain number of people will sign a petition of that sort. Who wouldn't, necessarily? The effort was entirely bought and paid for, essentially, in industrial America, commercial America, and companies that are in large measure headquartered out-of-state. We found out in the work session, however, that they overreached. When we examined the text of the Bill, we discovered that the Bill that lies before you, we can't change. We have no power to change even a comma of this Bill. The Bill that lies before you actually repeals about a million dollars of tax annually more than what was put on the books in September of 1991. The fiscal note is on the order of \$16 million a year. If we were repealing the snack tax that was enacted in 1991, it would be about a \$15 million fiscal note. So, the commercial and industrial interests that have brought this before you went out and grabbed another million dollars of revenue thinking they could slip it by this institution. And they will. They will succeed. I would urge you, however, to consider an optional choice. The minority report on this Bill would give the people of Maine the option of addressing property tax relief for Maine municipalities, if they so chose, as an option or choice to spending \$16 million in repeal of the snack tax. I'm not going to argue the minority report, but I'm simply presenting this to you as a reason or justification for rejecting the current majority position on this Bill. Thank you very much.

Off Record Remarks

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

Senator **RUHLIN:** Thank you Mr. President. Senators of Maine, today we have an opportunity to do something that I think is long overdue. You have an opportunity to repeal, or take a meaningful step toward repealing, a tax that, at the time it was instituted, was ill considered. They said on the book ill administered and it is before us today as an example of a most unfair tax as you could possibly look for. That's called the snack tax. A snack tax is that tax in Maine that discriminates, disproportionately, because of the buying habits against our elderly, because it has prepared food as a part of that snack tax. It discriminates, disproportionately, to the lower income, because, again, of the preparation basis. Many people who do not have facilities to fully prepare food rely upon those snacks as part of their diet. So we have a tax that is disproportionate. That discriminates. It has been mentioned, and I remember it well, the retreat that the Tax Committee went on and had a study 2 years ago where they looked at fairness issues in taxes, the reasons for the taxes, and so forth. And at that retreat, what we were trying to do is find a fairer way, a more acceptable way, to have a tax that could be more readily identified. Look at this tax for a moment, if you will, and think of this. You have your major food companies that can take and put the resources readily available to them to program in the barcodes, to program in their computers, and they can get that information directly because they have the manpower, the resources from the Bureau of Revenue Services. Program that in, run through the checkout

line, and they're going to be accurate. But take the mom and pop stores that we all say we want to help, those small Maine groceries and so forth who don't have those resources. Who have to rely upon their interpretation of what a snack tax is and who are liable to an audit from the Bureau of Revenue Services. They're there with their small calculator or whatever it is for an adding machine, trying to do their interpretation, trying to do the right thing with a tax that even people who work in tax law say is hard to identify, hard to administer, hard to tell what item is taxable and what item is not taxable. If they make a mistake, they're liable, not to really make up the tax that they didn't charge a customer, but they're going to make up the interest. They're probably going to get a penalty on it. That's what happens with small mom and pop's on the snack tax. That's why many of us have been opposed to the snack tax since its inception. It was bad tax policy in 1991. It's bad tax policy in the year 2000. I hope you'll join with me in repealing today this unfair and discriminatory tax and remove it from our tax structure. Thank you.

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

Senator **HARRIMAN:** Thank you very much Mr. President. Good afternoon ladies and gentlemen of the Senate, I want to rise here for the fourth time on behalf of Senate District 23 to sit in this seat, for indeed, each and every session I have had the honor of serving here, this question has been before us. Indeed, the arguments in favor of repealing this tax have not changed. This is bad public policy. Let me give you a few examples why I hope you'll come to the same conclusion. The so called snack tax is very difficult to administer, particularly if you run a small business and don't have an infrared scanning system to check out the goods that your customers are buying, because it is so difficult to understand what snack is taxed and what isn't. For example, if you buy blueberry scones, you're not going to pay a tax. But if you buy blueberry muffins, you are. If you buy a croissant, you're going to pay a snack tax, but not if you buy a bagel. If you buy melba toast, rice cakes, or low sodium saltines, you're going to pay a snack tax. But if you purchase vegetable snack sticks, you're not. Buy a blueberry pie and you're going to get taxed. Buy an unbaked apple pie and you're not. Hershey's cocoa powder isn't taxed, but hot chocolate mix is. Kahlua flavored instant coffee, no tax. But if you buy a lemon instant iced tea, you pay the tax. Dried fruit, no tax. Trail mix, you're going to pay the tax. If you buy tapioca pudding, it's taxed. Oreo cookie yogurt cup, you pay the tax. And on and on and on I can go. And that's what we're afforded the opportunity, with this vote today, to clarify the tax law, to clean up a discriminatory tax. Some have discussed the so-called industrial complex, commercial giants who are feeding this discussion. Well, for me the discussion's being fed right out of my home. Everyday there are three youngsters heading off to school and I listen to my wife complain about the taxes she pays on food that goes in their lunch. I suspect that is happening all over the State of Maine, but for many, they don't know that they've paid an additional tax. This Bill before us is an opportunity to clear up the confusion. To get rid of the gimmick. And I would conclude, Mr. President, by suggesting that if you haven't already had the opportunity to visit on the 2nd floor the folks who are representing our agricultural community in this state who are downstairs in the Hall of Flags, I do hope that you will. And as you travel through their booths and meet the people who are trying to generate jobs and economic

security in the agricultural business, I hope you'll notice that most of them, the vast majority of them, are offering you an opportunity to taste their goods that would be snack taxed. Thank you Mr. President.

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

Senator **AMERO:** Thank you Mr. President. Ladies and gentlemen of the Senate, this Bill is before us today as a result of a citizens' initiative and I think it's a result of the fact that this legislature, over the years, has refused to act to remove one of the last remaining gimmicks that came into being in 1992. The motives of the citizens' initiative have been questioned because some of the funding for the petitioners was paid for by the Grocery Manufacturers of America, Pepsi-Cola, and others. But what did these groups have to gain? After all, this is a tax that's being paid for by Maine citizens. Not by these companies. I think it's because their products have been singled out for a tax where other food products are not. And I think it's nothing more than an attempt at dietary engineering for us, as a legislature, to tax only snacks as food products. So I think it's very legitimate that these folks who disclosed all of their expenditures, as they should, in participating and trying to axe the snack tax. But you know what, nobody was paid to sign that petition that I know of. I saw people standing in line at grocery stores in my district. They couldn't wait to axe the snack tax. And I can't wait for us to take the same action in this body and eliminate one of the last remaining gimmicks of the early 90's. Thank you, Mr. President.

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

Senator **DAGGETT:** Thank you Mr. President. Men and women of the Senate, there has certainly been a very good discussion of this by my colleague on the Taxation Committee, the Senator from Somerset, Senator Mills. I would only like to add a few comments to that. I would just say that there are few people around that would choose not to eliminate a tax. There are few of us who ask to be taxed more. It's just not something that we see. After serving several terms on the Taxation Committee, I can tell you that I have yet to hear testimony that says, gee, I'm willing to be taxed more so that someone else can be taxed less. It's just simply something that's not there. In fact, the most common kind of testimony is that if you don't take this tax off me, we'll go out of business. We hear that in the committee on a regular basis. Setting tax policy is very difficult. It's not equal, but, there is a great effort made to make it equal. A couple of years ago, when I was first on the Tax Committee, we did have a retreat and took a look at some of the principles that we were trying to achieve. One of those, that has been mentioned a couple of times, is the issue of volatility. Our tax code is one that provides for incredible income during economic good times and, unfortunately, poor income in bad economic times. Addressing the issue of volatility would help to level out the income so we don't go through these broad swings. Even though this is a relatively small piece, beginning to extend it in some kinds of rational ways, such as prepared foods, helps to eliminate that. It was spoken earlier. Anyone who thinks that the misunderstanding, or the difficulty, with this particular issue is the only one in the tax code, needs only to be reminded of the simplicity of the issue of non-biweekly pay being allowed and knowing that was going on for years. That was pretty easy to

understand, but that wasn't being complied with either. I just say that to indicate that I feel that argument is somewhat irrelevant. Anyone who wants to understand what should and shouldn't be taxed would not have any difficulty figuring it out and working it out with the help of the bureau. So, that's a pretty marginal issue. The problem is, and the plain fact is, it costs money to provide the services that state government is continually asked to provide. And again, I would say it is very rare that anyone comes in and says I'm willing to receive fewer services so that you may cut taxes. That's very rare. Generally, the request is to provide more services. Regardless of income, we have needs in this state for education, for school construction, for technology improvements. There are a lot of needs. I would suggest that there are many people that don't even realize that this was an issue. Didn't even realize it was on their grocery bill, except that, again, it has been elevated to the height of being a huge issue. I hope that you will consider these items when you vote and consider allowing Maine people an opportunity to have an option on the ballot. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Penobscot, Senator Ruhlín to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (H-1014) Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#320)

YEAS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BERUBE, CAREY, CASSIDY, CATHCART, DAVIS, FERGUSON, HARRIMAN, KIEFFER, KILKELLY, KONTOS, LAFOUNTAIN, LIBBY, LONGLEY, MACKINNON, MICHAUD, MITCHELL, NUTTING, O'GARA, PARADIS, PENDLETON, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: DAGGETT, DOUGLASS, GOLDTHWAIT, MILLS, PINGREE, RAND

EXCUSED: Senator: MURRAY

28 Senators having voted in the affirmative and 6 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **RUHLIN** of Penobscot to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1014)** Report, in concurrence, **PREVAILED.**

READ ONCE.

Committee Amendment "A" (H-1014) **READ** and **ADOPTED**, in concurrence.

LATER TODAY ASSIGNED FOR SECOND READING.