

MAINE STATE LEGISLATURE

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Senate Legislative Record

One Hundred and Twenty-Seventh Legislature

State of Maine

Daily Edition

First Regular Session
beginning December 3, 2014

beginning at Page 1

Senate at Ease.

Senate called to order by the President.

Off Record Remarks

RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

Seven members of the Committee on **VETERANS AND LEGAL AFFAIRS** on Bill "An Act To Provide Income Tax Relief by Expanding Gaming Opportunities"

H.P. 876 L.D. 1280

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-491)**.

Signed:

Senators:

CYRWAY of Kennebec
COLLINS of York

Representatives:

HANINGTON of Lincoln
KINNEY of Limington
MONAGHAN of Cape Elizabeth
SAUCIER of Presque Isle
TURNER of Burlington

Two members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-492)**.

Signed:

Representatives:

GOLDEN of Lewiston
LONGSTAFF of Waterville

Two members of the same Committee on the same subject reported in Report "C" that the same **Ought Not to Pass**.

Signed:

Representatives:

LUCHINI of Ellsworth
SCHNECK of Bangor

One member of the same Committee on the same subject reported in Report "D" that the same **Ought to Pass as Amended by Committee Amendment "C" (H-493)**.

Signed:

Senator:

PATRICK of Oxford

One member of the same Committee on the same subject reported in Report "E" that the same **Ought to Pass as Amended by Committee Amendment "D" (H-494)**.

Signed:

Representative:

DILLINGHAM of Oxford

Comes from the House with Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-491)** READ and ACCEPTED and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-491)**.

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

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **JUDICIARY** on Bill "An Act To Correct Errors and Inconsistencies in the Laws of Maine" (EMERGENCY)
H.P. 936 L.D. 1381

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-495)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-495)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-495) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

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

REPORTS OF COMMITTEES

House

Divided Report

Reports READ.

Senator CYRWAY of Kennebec moved the Senate **ACCEPT Report "A" OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-491)**, in concurrence.

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

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

Senator CYRWAY: Thank you, Mr. President. Men and women of the Senate, I rise today in support of the bi-partisan Majority Ought to Pass Report from the Veterans and Legal Affairs Committee on L.D. 1280. While there are, in fact, five reports, which is probably a record, it should be noted that 11 of the 13 members of the committee are in support of passage in one form or another. We had 7 on the majority report. As a result of the White Sands Market Analysis, initiated by an act of the previous legislature, our committee was presented with five bills dealing with the expanded gaming in Southern Maine. In summary, their report stated, "We believe there is additional capacity for casino gaming in Maine as part of an integrated dining and entertaining offering consistent with its existing brand and image." White Sands also recommended a competitive bid license award process that would, and should, require applicants to compete based on their ability to deliver, sustain, and potentially grow a gaming product that is net positive for both the state and the operator. I believe the Majority Report does that.

The following is a summary of the common language among the four Ought to Pass reports. The establishment of the Site Location Commission consisting of five members appointed by the Governor and confirmed by the Senate. If York or Cumberland County residents vote in favor of expanding gaming in their county the commission would develop an RFP process, hire necessary specialists to assist, and then evaluate the competitive bidding. Any bidder is required to submit a \$250,000 application fee to be used to off-set expenditures by the commission. The Site Location Commission will review the RFPs and select the best one based on a series of criteria innumerate in the bill. For example, a minimum of \$250 million capital investment in a resort-style casino with hotel, spa, restaurants, etcetera is required. Next is a description of how the project will preserve existing jobs, as well as create additional jobs. Their plan is to increase year round tourism and create additional commercial development in the region. Also how bidders will address any negative consequences of their development. These are but a few of the requirements of the legislation.

In addition, the successful bidder would be required to pay a license fee of between \$10 million and \$50 million. In the Majority Report, \$5 million would go directly into the General Fund and \$20 million will be held in escrow for five years to off-set any loss of revenues to the City of Bangor, the County of Oxford, as well as the Town of Oxford. The successful bidder is also required to enter into a contract that will, among other things, outline financial penalties for failure to perform.

The differences in the four Ought to Pass reports are in the tax rate on slot machines, the up-front license fee paid by the casino, the question of statewide or county referendum,

establishing a cascade for distribution of net slot revenues, and, most importantly, at least in my mind, is whether or not preference should be given to any RFP that includes a harness racetrack with it. While I certainly have mixed emotions on the issue of expanding gaming, I am deeply committed to Maine's agricultural industry as well as our agricultural fairs. Quite simply, that is the reason that I'm supporting this version of the bill. The people who breed, train, and race horses are the epitome of small Maine business people who have watched the industry suffer at the hands of out-of-state corporations who have no interest in their plight. They find it difficult to understand how the Legislature can allow gambling issues to be run by referendum, as well as the apparent interest in protecting monopolies. This is not the free enterprise system. It is simply not fair and it is certainly not good public policy and it has cost Maine taxpayers in excess of \$160 million. Harness racing preserves open farm land and contributes millions of dollars to the economy, supporting Mainers who are both directly and indirectly involved in the industry. The Legislature has somehow lost its focus on part of our agricultural heritage. We should be working together to benefit an entire industry that could jump start a whole section of our economy. Those who work with horses provide jobs to thousands of Mainers, either directly or indirectly. They invest in equipment. They employ veterinarians, buy lots of hay and oats, and support countless other businesses, plus they provide and protect Maine's open spaces that we all consider dear to our hearts. Many states have seen success by tying racetracks with casinos over the past few years. One only has to look at New York, Pennsylvania, and, most recently, Ohio to see the expendable growth and far reaching benefits this can have. Agriculture was, and continues to be, one of the pillars of Maine's economy.

This legislation is similar to the liquor contracts in the state that will actually be telling the vendors what they will pay for a license. This certainly is better than another referendum and the state ends up with nothing again. That will happen. At some point there will be a casino built in Southern Maine. It'll be done with legislators' involvement or by another referendum, but it will happen. Ignoring the issue is worse than kicking the infamous can down the road. It's more like rolling a barrel filled with millions of dollars into another out-of-state company's pockets, to the continued detriment of Maine's people. There are countless words spoken and hours spent trying to lure large national corporations and others into Maine. We have a chance here to assist large groups of small businesses, in the most part family farms, that are already here. The fact is that this report would be an opportunity to right a couple of wrongs that have stifled the integral part of Maine's economy. It provides for millions of dollars in new capital investments, hundreds of new jobs, millions of dollars to the General Fund, and, at the same time, the promise of a future for a segment of our agricultural economy.

In closing, many people have forgotten that 2003 statewide referendum approved by Maine voters that authorized two racinos in Maine; one in the North and the other in the South. While the people in Bangor supported a racino in their community, Scarborough voters did not and time ran out before an alternative location could be selected. This bill rectifies the situation and gives the people of Southern Maine the chance to opt in to something that was approved over a decade ago. I would appreciate your support of the Majority Report. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Collins.

Senator **COLLINS:** Thank you, Mr. President. I rise in support of the Majority Report on L.D. 1280. I've been around for a few years and am certainly no stranger to the gaming debate. Session after session this legislature wrestles with this issue. The 2013 taskforce failed to agree on how to expand gaming in Maine. In the 126th Legislature there were six proposals for gaming facilities. All six bills died in this Body after days of debate and still we were no closer to a statewide gaming policy. What makes L.D. 1280 any different? As a member of the Veterans and Legal Affairs Committee, I can tell you that the bill before us today lays the foundation for a comprehensive and consistent gaming policy. The Majority Report on L.D. 1280 builds on the recommendations of an independent study, not a study done by interested parties. Instead of relying on self-interested ballot initiatives, the Majority Report defines a rational and reasonable process that serves the best interests of Maine people, regionally and statewide. There is a competitive bid process. There is a \$25 million license fee, with \$20 million placed in escrow for the protection of the municipalities that host the existing casinos. There is a minimum capital investment, bricks and mortar of \$250 million. There is a non-refundable application fee of \$250,000 and a non-refundable investigation fee of \$100,000. County and municipal voters' approvals are required. What's before us today strikes the appropriate balance that maximizes state resources. This is an opportunity to generate millions of dollars in revenues annually to support Maine veterans, to help fund a robust transportation budget, and to support harness racing and agricultural fairs. This is an opportunity to create sustainable well-paying jobs, open the doors to an enormous construction project, and a destination resort casino that will enhance the tourist economy. It's time to move forward, folks. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Patrick.

Senator **PATRICK:** Thank you, Mr. President. Ladies and gentlemen of the Senate, colleagues and friends, what a difference a day makes. This is a bi-partisan report. It's a little different than the 12-1 bi-partisan report that we just rejected the other day, but I guess that's the difference a day makes. I am going to consistently speak in opposition to this for several reasons, but will also say that I am proud of the work that the committee did. We did not get a statewide gaming policy because that's a little different than trying to ascertain as to whether or not we were going to accept casino gaming. The statewide gaming policy would cover bingo, games of chance, sealed tickets, harness racing; everything under one umbrella. The committee did fall short on that and we have and it's going to take years for us to get there. This is an issue as to whether or not we want to allow more casino gaming in Maine.

Having spent my whole legislative career in Veterans and Legal Affairs, I have been fortunate enough to see just about every aspect of what has gone on with all aspects of gaming and I will say that I was here when Shawn Scott passed the two racinos in Maine at the same time when a casino was defeated. I can honestly say he was a very brilliant man and was able to get it. One of the things I will say is he didn't build a racino in Maine. He sold the license to Penn National for probably three times what he

paid. He spent around \$5 million of his own money to get a license that was worth about \$25 million. I think he sold it for around \$60 million. That's almost like the same day lending, in my line of thought process. From there I will say the good Senator was right, Bangor okayed it. You've got to understand that referendum was on the books for a year. Believe it or not, I blame Scarborough for falling flat on their face because they had over a year to prepare to get their citizens' initiative ready so the people were taking it. They had their time in the sun and I'm disappointed that we're bringing it up again, but that's how it came down. I think they've had three or four votes and said no. We've moved on since then because we now know that Scarborough probably is not the place it's going to go. I supported trying to protect harness racing. If anyone says anything else they're probably wrong because Scarborough Downs is still a business because I was smart enough to put 4% of the racino in to make sure that they could keep their business viable. Right now I think it's on life support.

What is this really about? When all is said and done, I know there's going to be more said than done, we've had seven or eight referendums, or more than seven or eight referendums, that the citizens of the state of Maine said no way. I do happen to live in the area, but it's not in my district thank goodness because I would be entitled to probably vote for it, it's not in my district but it's in my county. That business came onto the books by only a few thousand votes. It wasn't a mandate by the citizens of the state of Maine. It was a squeaker. The reason this bill is here is because the citizens of the state of Maine have said many times they don't want it. We have an industry, harness racing, that has been viable in Maine for 200 years. I go back to when I was 10 years old, in 1964. I snuck in the back of my Dad's car, and I think I said this once before, and drove down to Scarborough Downs. He got half-way down and discovered I was there and wasn't going to let me. I was indoctrinated to harness racing. I actually liked it. I still like it. This is about what do we want, do we have the ability? The White Sands Report, I'll say, was fair for who did it. Once again because realistically they're a business that deals with gaming and they were fair. I could have told them, and I think myself and my former Veterans Affairs Committee could have told them, there is a market for another casino in Maine. Actually White Sands said two. When pressed, we said if we could actually have one in Washington County and one in Aroostook County. They said, if you divide the amount of the 250 machines, divide them in half, they could have two smaller ones. Realistically, you can have as many as the market will bear and if you want free market to suffice as the law let as many in as you want. What you're saying is the White Sands Report says if you have another one in, in order to not adversely affect existing businesses, you have to have a tax rate of not 45%, as this bill has, but you have to have a tax rate of 35%. Why? Because the return on investment that Penn National and Churchill Downs put into their buildings and their businesses are going to be adversely affected. They call it cannibalization.

Cannibalization, if you look at Atlantic City, money making casinos are shutting down because they're not making the return on investment. I will say that I think all gaming industry people are extremely greedy and they have to have a lot more return on investment than other businesses, but they actually shut down viable businesses. I think there were three casinos either this year or last year that just shut down that were making money, but they weren't making enough because of the over-saturation, cannibalization. What does White Sands say about

cannibalization? Before I mention that, what was the cannibalization in Oxford when the citizens of the state of Maine said okay to Oxford, that they could put one? It's 100 miles as the crow flies or less from Oxford to Bangor. It affected them over 10%. They already lost 10%. What does White Sands say about what's going to happen to the existing businesses? Another 10% to Bangor and 20% to Oxford. I drew a little map, had 95 going from New Hampshire up to Houlton. I put an X where Houlton was and an X where Bangor was and an X where somewhere in Southern Maine it's going to be. I drew off to the left into Western Maine, off to a secondary road. I said to them, "You figure only 20% is going to be lost. You have one in the way into Maine, the prime way in. People are going to by-pass that and head off down a secondary road, 45 miles up the secondary road, and they're going to go visit that one just as often." I said to them, "I doubt it. Realistically, the knowledge that I've garnered over my years in the gaming business, I really think it's going to affect Bangor closer to 15% or 20%. I think it's going to cannibalize Oxford close to 40% or 50%." How do I know? Because I actually do some on-site studies myself and I actually have gone numerous times to Bangor and Oxford and look at the license plates to figure out where they come from. I know some of them come from the Berlin area, which is the north end of Oxford. Most of them come from the southern end of 95 and they don't share all their secrets with you. This is just by me driving up and down the parking lots and looking at the New York, Connecticut, New Hampshire, Massachusetts, and Vermont license plates. Most of the times I've been there I'd have to say there is around 15% to 20% of the people who come from out-of-state. The one thing I know about gaming, and I will say this again, I've been to Las Vegas 23 times. I've been to Atlantic City two or three times. I've been to Foxwoods. I've been to Canada. I've been all over the place. You go where the best places are. No one's going to continue to go to a smaller casino if they have the biggest one right there.

We're looking at what does 11% mean. It means the profitability of two existing businesses is going to be adversely affected. We actually have some things within the bill that help the municipalities, which is good because, if you get right down to it, if a business is going to suffer or the community is going to suffer I'd rather make sure we protect the communities. We have 1% for Bangor and 1% for Oxford and 1% for Oxford County and 1% for Penobscot County.

This really gets right down to every time, in my estimation, is that we could pass this bill. I'm not going to cry because I'm not going to lose any money on this. I have no stock in any of them. It's not going to personally bother me. I will say right up front, in committee everyone's heard me say this, if this committee does one thing, and one thing only, in my 13 years on the Veterans Affairs Committee, I want to make sure that within this bill, if it passes, that every program that this legislature has passed in the last 15 years, the money is there to fund everything, like perpetual care in cemeteries, the VSO offices, the vans, everything. At least that's in it. What will this also do if the cannibalization results in a 30% or 40% cut to Oxford and a 20% cut to Bangor? The cascade, which are the carrots that we love, which are all the different things that the money is going to, roads and bridges, the money going to harness racing, horse racing, to everything. In the existing cascades that we have is education. Education is going to take a big hit because if that goes down, if the revenues go down, the percentage of tax that they're paying is going to go down, so they're going to lose that. The neat thing about these

casinos is that Shawn Scott, when he passed his, only had like five or six carrots. He was only going to get, extrapolate, 25% to taxes. We actually, the committee, under L.D. 1280, got him for 1% gross and 39% net, which was kind of the neatest thing we ever did because we're unique in the gaming industry. Besides the loss of education dollars, the thing I brought up with the problem with all these different casinos and cascades is we're going to end up, if we pass this, with three different cascades at three different rates; two are paying the same rates and one other different. If it negatively affects the amount of money, and if we do have to lower the tax rate down from 46% down to 35%, we're actually going to have to have public hearings if and when we decide to lower the cascades, and it's going to happen because nowhere in the country do you have the same high tax rate anywhere if you have more than one casino.

Gaming in itself, as I've learned over the years as I'm weaning myself off because I really don't see the draw any more, is in our law we allow casinos to pay out between 89% and 93% payouts. What does that mean? If you are on a slot machine and you put \$100 in, you're money's going to recycle and you're going to get back 89%. Then you're going to give it back, it circulates again. What does it mean? Basically, it says how long you're going to hang onto your money because these buildings aren't built on winners. There are a lot of things that we look at that are good. We say, "Wow, we're going to get this extra tax revenue," or "What's the state going to get if we support this?" We're going to get \$12 million more the state's going to get on the books. If you divide \$12 million by 1.3 million you'll probably get \$4.50 per person. That money isn't going to be divided equally amongst the state, so what has the state actually gotten?

I know it looks good and I'm pretty sure that almost everyone's already figured out where they're going to go on this. We said in the last bill that a lot of it was poorly written and there were aspects that weren't good. There are some things in this bill that I think are a little on the poorly written side. Even the veteran's part of it; authorized to submit legislation to the First Regular Session of the 128th to implement the recommendations of the Director of the Bureau of Maine Veterans Services. What I wanted them to do is bring back to us the ideas that they had and the committee would decide where we were going to go, not empower the director to have a say on where everything else goes. I'm sure we can fix that if we have to because this is the legislature and we can fix almost anything. This has at least 16 carrots, I guess, that are good for certain areas and certain things and it's going to help out, but when all is said and done what I would actually say is if the citizens of the state of Maine, 10 or 11 times, said no and two times they narrowly said yes should we be moving forward with this? I could go on for about another hour but I'm not going to because it's not going to make much difference and I may get up again. With that short speech, Mr. President, I will sit down and thank you for your time.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Kennebec, Senator Cyrway to Accept Report "A" Ought to Pass as Amended by Committee Amendment "A" (H-491), in concurrence. 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 (#357)

YEAS: Senators: BAKER, COLLINS, CYRWAY, DIAMOND, DILL, GERZOFSKY, HASKELL, KATZ, Langley, MCCORMICK, SAVIELLO, VALENTINO, VOLK, WILLETT, WOODSOME

NAYS: Senators: ALFOND, BRAKEY, BREEN, BURNS, CUSHING, DAVIS, DUTREMBLE, EDGECOMB, GRATWICK, HAMPER, HILL, JOHNSON, LIBBY, MASON, MILLETT, MIRAMANT, PATRICK, ROSEN, WHITTEMORE, THE PRESIDENT - MICHAEL D. THIBODEAU

15 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by Senator **CYRWAY** of Kennebec to **ACCEPT** Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-491), in concurrence, **FAILED**.

Senator **CYRWAY** of Kennebec moved the Senate **ACCEPT** Report "B" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B"** (H-492), in **NON-CONCURRENCE**.

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

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#358)

YEAS: Senators: BAKER, BRAKEY, COLLINS, CYRWAY, DIAMOND, DILL, DUTREMBLE, GERZOFSKY, KATZ, Langley, MCCORMICK, PATRICK, SAVIELLO, VALENTINO, VOLK, WILLETT, WOODSOME

NAYS: Senators: ALFOND, BREEN, BURNS, CUSHING, DAVIS, EDGECOMB, GRATWICK, HAMPER, HASKELL, HILL, JOHNSON, LIBBY, MASON, MILLETT, MIRAMANT, ROSEN, WHITTEMORE, THE PRESIDENT - MICHAEL D. THIBODEAU

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **CYRWAY** of Kennebec to **ACCEPT** Report "B" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B"** (H-492), in **NON-CONCURRENCE**, **FAILED**.

Report "C" **OUGHT NOT TO PASS ACCEPTED**, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Protect Certain Information under the Maine Human Rights Act"

H.P. 802 L.D. 1171

Majority - **Ought to Pass as Amended by Committee Amendment "A"** (H-476) (11 members)

Minority - **Ought Not to Pass** (2 members)

In House, June 22, 2015, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-476).

In Senate, June 23, 2015, on motion by Senator **BURNS** of Washington, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

Comes from the House, that Body **INSISTED**.

On motion by Senator **BURNS** of Washington, the Senate **ADHERED**.

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 **HEALTH AND HUMAN SERVICES** on Bill "An Act To Increase Access to Health Security by Expanding Federally Funded Health Care for Maine People"

H.P. 588 L.D. 854

Reported that the same **Ought to Pass as Amended by Committee Amendment "A"** (H-470).

Signed:

Senator:
HASKELL of Cumberland

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