

MAINE STATE LEGISLATURE

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

Daily Edition

Second Regular Session

beginning January 3, 2018

beginning at page H-1216

and help centralize that data so that it can be forwarded. I think that we need to make data-informed choices about treatment for mental health and substance abuse, and I think this bill is the beginning of some important functions that we've addressed, some of which we've addressed in the Opioid Task Force, and I ask you to follow my light. I thank you.

Representative HYMANSON of York **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

In accordance with the provisions of Section 21 of Article IX of the Constitution, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 124 voted in favor of the same and 0 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Acts

An Act To Amend the Maine Tax Laws

(S.P. 676) (L.D. 1805)

(C. "A" S-439)

An Act To Expand and Clarify the Areas Subject to Municipal Residency Restrictions for Sex Offenders

(H.P. 1309) (L.D. 1877)

(C. "A" H-709)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

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 Thursday, April 5, 2018, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

House Order, Propounding a Question to the Justices of the Supreme Judicial Court

(H.O. 58)

TABLED - February 20, 2018 by Representative BEAR of the Houlton Band of Maliseet Indians.

PENDING - **PASSAGE**.

The SPEAKER: The Chair recognizes the Representative from the Houlton Band of Maliseet Indians, Representative Bear.

Representative **BEAR**: Yes, Madam Speaker, Ladies and Gentlemen of the House. I rise to move Passage of House Order 58, and I'd like to speak to my motion.

The SPEAKER: The Representative may proceed.

Representative **BEAR**: Thank you, Madam Speaker, Ladies and Gentlemen of the House. The needs of our tribal members are on the record and are at -- in certain instances are critical, and the tribe has made efforts over the years, as has other tribes, to try to remedy this, and one of the strategies has been to try to adopt the successes of other tribes and communities and their businesses, both in the state and across the country. Tribal gaming is one such approach that the tribes have consistently attempted to pursue in the State of Maine, and there's good reason for this. There's a lot of support. This House has repeatedly passed tribal gaming bills. In fact, I can't think of even one instance when this body has not approved a tribal gaming bill before it, and I'm very thankful of that.

Having said that, I just want to call attention to what we're faced with here. The question is very simple, but the basis for

it, the justification for it, is not that simple. It requires that the question be important and it requires that the question raise a somber occasion, and I submit, Madam Speaker, that the answer to both of those questions is yes. This is an important question and this is a somber occasion. A somber occasion is one where... we might not be able to get a legal opinion on exactly whether or not the facts here constitute a somber occasion. I believe that the question is a political one and one that is squarely in this chamber, to be asked and answered by way of your vote in support of or opposing it.

So, the reasons why this is important is because, as I said, we have a critical situation relative to other groups in the state: we have health issues; education issues; the budget doesn't cover it; we have housing shortages; we need jobs; and we want to pay our own way. That's the simple response to questions, too, as to why do you want to do this? Why gaming? Well, it creates jobs, it provides training in the business area which we can transfer to a government -- tribal government service quite easily, and back and forth. It will raise critical revenues that will not otherwise be generated in the remote areas where we're located.

The question is about a Supreme Court ruling some 30 years ago, 31 years ago, when it was asked whether or not California could stop tribal gaming because it was impacting gaming plans in that state by nontribal operations. That was essentially the fact situation. And the Supreme Court was very clear. We don't think it's fair, I'm paraphrasing but I have the actual headnote here. The Supreme Court says if a form of gaming is illegal in a state, Indian reservations may not engage in that form of gaming, and if a form of gaming is legal in a state, Indian reservations may engage in that form of gaming. That's the essence of the court ruling that we would be asking the Supreme Court of Maine to provide advice to us, as we have LD 1201, which you've tabled this morning yet to be considered, whether we follow through with insisting on our initial vote, that it be passed, the Minority Report be passed; but at least it'll provide advice. It's not binding. It's legal, it's constitutional, it's according to the rules. We have this right to ask this question of the court if there is an important question if there is a somber occasion. And, this simple question, I believe, will be easy for the court to handle.

I know that this decision has been applicable in all other 49 states. In fact, there are some 400 tribal gaming facilities that rely on this ruling, which prompted a federal law that was passed a year later called the Indian Gaming Regulatory Act, and that's how they've organized across the country. However, it has been thought that the Indian Gaming Regulatory Act would not apply in the State of Maine by virtue of a Settlement Act that occurred 35 -- 37 years ago.

However, it's never been litigated, it's never been asked; the court has never been asked does the Supreme Court ruling still apply in Maine even though the federal law doesn't apply? Well, I don't question that the federal law doesn't apply, however, neither Congress nor a state can say that a Supreme Court ruling does not apply, so... especially if it's constitutional, and that's what the Supreme Court was dealing with. It was the principle that they didn't want Indians panhandling. They didn't want Indians on the street begging. They didn't want Indians having to, you know, suffer or be without while there was a way for them to start businesses equivalent to those that were already licensed in their jurisdictions. That's -- I'm paraphrasing that.

But, let me just go to the impact of this, and why this is somber. It is somber because, more than we realize, tribal and nontribal members of the jurisdiction rely on our succeeding

with our gaming proposal. In fact, some 75-85% of new employees that would be hired by the tribe if the Supreme Court ruling affects our decision to -- for passage of LD 1201 or any other tribal gaming bill. They would stand to benefit more than the tribes in the job sense, because the tribes simply don't have the administrative or technical or business skills to staff out and operate such businesses. But, also, they have similar needs in terms of unemployment. They need jobs.

I have letters which I have circulated to the members that clearly show that there is broad support for tribal gaming in the jurisdictions. I have here from the Town Manager of Houlton, Maine, that "the consensus is that the tribal gaming will create new job opportunities, provide tax relief to local businesses and residents, increase tourism in northern Maine, and provide revenues that will enable the town to maintain and upgrade current infrastructure."

Then we have the Aroostook County Commission by way of an example of how this local support that "on behalf of the Aroostook Board of County Commissioners, I am writing in support of the right of the Houlton Band of Maliseet Indians to operate a casino on tribal lands without the need of a referendum. As you know, gaming is currently widespread and legal in the State of Maine. Aroostook County is in dire need of economic development initiatives to stem the outmigration of our youth and our future. The estimated \$400,000 that the county itself would receive from the proceeds would be earmarked for the jail budget, which is subjected to funding caps," etcetera.

And then here are other letters of support, and I could go on, industry supports that and say that the Maine Legislature should act in favor of this to allow for the beginning of an economic Renaissance for the greater region. By way of example of the kinds of support, the expectation that this would create jobs and increase revenues that are much needed including for administrations at the municipal and county levels. I say that because I've been encouraged by members of this body, in Committee at the Committee level and privately, you know, let's found out what the court might say, you know, that because this is a safer way to go than simply going and getting a declaration, that this is safer in the sense that an opinion from the Supreme Court would not be binding. It would be advisory.

So, it would say that the Supreme Court ruling has limits, that a Supreme Court application in the State of Maine would mean we could not start casinos on nontribal land. The Supreme Court is very specific, and it could only be casinos that were operated by the tribal government and only for the purposes of the programs I described, that they're critical, and that the reason for it is to supplement limited capped budgets, often grant-based budgets that are only a year or two years or three years often at the maximum provided you comply with reporting and work products and what have you.

So, I think it's safer to do it this way than to just go and get a declaration, although one would say why don't you just do that? Well, the reason is I think that it's good manners to try something less than going to court first, and this is the last step. This is it. You -- we have the power to ask the court, as some of you have asked me that we should do, about whether or not the Supreme Court ruling applies, and I think we will benefit if it does, and I believe it does; and court opinions from federal lawyers, practitioners who are very experienced in tribal gaming and in the main legal environment, tribal environment, have already given opinions.

Now, the Attorney General of Maine expressed an opinion two years ago, and it was referred to me recently; and this

letter from another lawyer, Doug Luckerman here, who is an expert in our courts on these issues of the tribal government treaties and gaming, has answered that letter to point out that previous rulings in 1996 with the Passamaquoddy that asked only the question of whether the Federal National Indian Gaming Regulatory Act applied in Maine, that was correct. "That ruling did correctly decide that the NIGA did not apply. However, it did not deal with the question of whether the Supreme Court ruling itself applied." So, here we are asking, together, the court to give us advice on whether in fact the Supreme Court ruling applies so that we can conduct gaming, and limited by the court's position that it's only on tribal land and that it is for government purposes, and that it is for those things that we need to have funded. This is not to have a reckless operation but it is to be consistent, I would urge my fellow members to know, with responsible gaming, if it ultimately results in favorable consideration by this body and the other and by the governor. Who, by the way, the Executive did take time to come and walk through proposed tribal lands that have been developed for gaming, and I believe it's safe to say that there will be discussions, depending on the way the court would rule, with the Chief Executive and we're open, of course, to discuss this with everyone, and not to give up, as this may be the last time I speak in this body, given that this is the end of the term and may be the last issue I'm going to be dealing with directly, anyway.

I just want to emphasize that I certainly appreciate the past support we have received, the consistent support. I don't want to take any more time other than to say this is critical, this is as Chief Commander said in her testimony as Tribal Chief, she said, "from a tribal government perspective, I would like to emphasize that this proposal, tribal gaming, is critical to the health and welfare of the Maliseet tribal people, who currently suffer the highest mortality and unemployment rates in the entire State of Maine. Funds will provide expanded services to our members. It will decrease the need for public assistance and raise the standard of living for people, along with many other residents of Aroostook area." And I think that sums up why this is both a somber occasion and why this is an important question. And we've been consistent, the tribes generally have been consistent, and we've come so close, and I believe that there is broad support.

The question about gaming is not whether or not it should be legalized, it's whether or not it is something that is of benefit to those who are operating it, and certainly we believe it will be for the tribes. I can only speak for my own people, for the Maliseet tribe, but I think the record shows that the chiefs of the Passamaquoddy, Penobscot, and the Micmac have been, despite perhaps some recent ambivalence or some recent frustrations because they have come so close, believing that gaming is good -- good business, and that it will help meet needs that are currently unmet and that result in mortality rates being the highest.

Chief Sabattus, our current chief, just came back from Washington, DC, meeting with Senator Collins, and asking that diabetes grant funding be reinstated and continued and because these are yearly programs. Diabetes is a big problem, diet and what have you, and it's killing people. We need the money, and it's hit or miss as to whether or not that continues to flow. This is a life and death situation. This is somber. This is important. Thank you.

Representative ESPLING of New Gloucester **REQUESTED** a roll call on **PASSAGE**.

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 Brooksville, Representative Chapman.

Representative **CHAPMAN**: Thank you, Madam Speaker. Friends and Colleagues of the House, a few weeks ago, I rose in this chamber to make a comment about the separation of the branches of government. And, because the House Order before us at this moment is somewhat unusual, I thought I'd take a moment or two to give a little bit of explanation, procedurally, of how this really works. So I'm going to start by reading one short paragraph in the Constitution of Maine, Article 6, Judicial Power, Section 3. "To give opinion when required by Governor or either branch of the Legislature. The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law and upon solemn occasions, when required by the Governor, Senate, or House of Representatives."

This is an example where there is a slight connection between the branches of government, and clearly the purpose of this particular connection is to allow the other branches of government to get some advice from the Justices of the Supreme Judicial Court. Unlike a court decision, which has the force of law and sets precedence, advice from the justices does neither. But, let me explain at least my familiarity with what questions have been brought to the Justices of the Supreme Judicial Court during my tenure here in the Legislature, and what the outcome of that has been. Because, as it might be easily imagined, the Justices of the Supreme Judicial Court are not eager to enter in to the business of the Legislature or the business of the Executive Branch, and so, they review requests of questions that come to them in a very narrow fashion. Just to give an idea of what the recent questions have been, in the 125th Legislature, this body, the House of Representatives, sent a question to the Justices relative to the nature of business relationships vis-à-vis the Treasurer of the State, and the Justices declined to answer the question. Next, the Chief Executive asked a question of the Justices dealing with the relationship of the Attorney General to the Executive Branch relative to hiring of legal help and, again, the Justices declined to answer that question.

In the 127th Legislature, the Chief Executive asked another question of the Chief of the Justices of the Supreme Judicial Court, relative to what the nature was of adjournment by the Legislature relative to the timing of his veto authority. And in that case, the Justices did offer an opinion. You might recall that there were about five dozen laws that whether or not they were enacted and in force or not was in question. And so this rose to a level of both immediacy and importance that the Justices took on that question and provided their advice. And then, finally, in the 128th Legislature we had an instance in which the other body, at the other end of the hall, asked a question of the Justices relative to citizen-enacted legislation around ranked-choice voting. And, again, due to the immediacy and importance of it, the Justices did provide their advice.

Now, finally, let me turn to why I believe the question that is being propounded in this House Order is appropriate for us to ask and why I believe the Justices would take it up. And that is to say, the question really has to do with the application of a United States Supreme Court ruling to what we in the State Legislature are authorized to do. Do we, as a Legislature, have the authority to regulate gaming on tribal land? Can we prohibit it? Can we allow it? Can we regulate it? This is the basic question that we need to know prior to our enacting laws that might seek to prohibit it or allow it or regulate it; and, for that reason, it's both timely and important because this has to

do with the application of the law of the land, case law from the United States Supreme Court, on what we as a Legislature can do. Thank you, Madam Speaker.

The SPEAKER: A roll call has been ordered. The pending question before the House is Passage of the House Order. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 580

YEA - Ackley, Alley, Bailey, Bates, Battle, Beebe-Center, Berry, Bickford, Blume, Brooks, Bryant, Casas, Chapman, Collings, Corey, Daughtry, DeChant, Denno, Devin, Doore, Dunphy, Farnsworth, Fay, Fecteau, Gattine, Golden, Grant, Hamann, Handy, Hanington, Harlow, Hickman, Hogan, Jorgensen, Kumiega, Lawrence, Longstaff, Madigan C, Madigan J, Malaby, Marean, Martin J, Martin R, Mastraccio, McCrea, McElwee, Melaragno, Monaghan, Moonen, Nadeau, O'Neil, Parker, Perry, Picchiotti, Reckitt, Riley, Rykerson, Sheats, Skolfield, Spear, Stanley, Sylvester, Terry, Tipping, Warren, Zeigler, Madam Speaker.

NAY - Austin B, Austin S, Babbidge, Black, Bradstreet, Campbell, Cardone, Chace, Cooper, Craig, Dillingham, Duchesne, Espling, Farrin, Foley, Fredette, Fuller, Gerrish, Gillway, Ginzler, Grignon, Guerin, Haggan, Hanley, Harrington, Hawke, Head, Herbig, Hilliard, Hubbell, Hymanson, Kinney J, Kinney M, Kornfield, Lockman, Luchini, Lyford, McCreight, O'Connor, Ordway, Parry, Perkins, Pickett, Pierce J, Pierce T, Pouliot, Prescott, Reed, Sampson, Sanborn, Sanderson, Schneck, Seavey, Simmons, Sirocki, Stearns, Stetkis, Stewart, Strom, Sutton, Tepler, Theriault, Timberlake, Tucker, Tuell, Turner, Vachon, Wadsworth, Wallace, Ward, White, Winsor, Wood.

ABSENT - Cebra, Frey, Grohman, Harvell, Herrick, Higgins, Johansen, Mason, McLean, Sherman, Talbot Ross.

Yes, 67; No, 73; Absent, 11; Excused, 0.

67 having voted in the affirmative and 73 voted in the negative, with 11 being absent, and accordingly and accordingly the House Order **FAILED PASSAGE**.

SENATE PAPERS

Resolve, To Recognize the 100th Anniversary of the American Legion on the Capitol Grounds

(S.P. 731) (L.D. 1901)

Came from the Senate, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

REFERRED to the Committee on **STATE AND LOCAL GOVERNMENT** in concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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

Representative **SYLVESTER**: Madam Speaker, permission to speak on the record?

The SPEAKER: The Representative may proceed on the record.

Representative **SYLVESTER**: Madam Speaker, had I been present for LD 257, I would've voted yea.

On motion of Representative HICKMAN of Winthrop, the House adjourned at 12:26 p.m., until 10:00 a.m., Tuesday, April 10, 2018, in honor and lasting tribute to Lou Nerren, of Raymond and Betty McDermott, of Raymond.