

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-Second Legislature

State of Maine

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First Regular Session
December 4, 2004 to March 30, 2005

Pages 1 - 410

Sent down for concurrence.

Bill "An Act To Extend Civil Rights Protections to All People Regardless of Sexual Orientation"

S.P. 413 L.D. 1196

READ A SECOND TIME.

On motion by Senator **HOBBS** of York, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**.

Off Record Remarks

Senate As Amended

Bill "An Act To Make Technical Changes to the Laws Establishing the Lincoln and Sagadahoc Multicounty Jail Authority" (EMERGENCY)

S.P. 242 L.D. 744
(C "A" S-31)

READ A SECOND TIME and PASSED TO BE ENGROSSED AS AMENDED.

Sent down for concurrence.

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

ORDERS OF THE DAY

Unfinished Business

The following matter in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later (3/23/05) Assigned matter:

Bill "An Act To Provide Public Health Protection Authority to the Department of Marine Resources"

S.P. 228 L.D. 691

Tabled - March 23, 2005, by Senator **DAMON** of Hancock

Pending - **PASSAGE TO BE ENGROSSED**

(In Senate, March 23, 2005, **READ A SECOND TIME**.)

On motion by Senator **DAMON** of Hancock, Senate Amendment "A" (S-45) **READ** and **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-45).

Ordered sent down forthwith for concurrence.

Off Record Remarks

Senate at Ease.

Senate called to order by the President.

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

Bill "An Act To Extend Civil Rights Protections to All People Regardless of Sexual Orientation"

S.P. 413 L.D. 1196

Tabled - March 29, 2005, by Senator **HOBBS** of York

Pending - **PASSAGE TO BE ENGROSSED**

(In House, March 8, 2005, **REFERRED** to the Committee on **JUDICIARY** and ordered printed, in concurrence.)

(In Senate, March 29, 2005, **READ A SECOND TIME**.)

On motion by Senator **PLOWMAN** of Penobscot, Senate Amendment "A" (S-44) **READ**.

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

Senator **PLOWMAN:** Thank you, Madame President, men and women of the Senate. I am offering this amendment that, basically, sends L.D. 1196 out for referendum. Right now we are in a position you should recognize. We're out of concurrence. The public has voted 'no' and we have voted 'yes'. We need to send this back out to the public to tell us whether they are insisting on their position or whether they are going to recede and concur with us. It's as simple as that. We have two different positions. I don't see any fairer way to do this. I offer this amendment for your consideration and I ask you to vote in favor. Thank you.

Senator **HOBBS** of York moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-44).

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

Senator **HOBBS:** Thank you very much, Madame President. Since the public hearing of last week there has been much clamor

regarding whether or not there should be a referendum clause attached to this bill because a common question is asked, 'Why are we even talking about L.D. 1196 when the people have already spoken?' I think that's what the good Senator from Penobscot, Senator Plowman, has mentioned. If this were an Initiated Petition piece of legislation initially, then I think it should go back to the people. It would have more thought to go back to the people. The first non-discrimination bill was originated in the legislature and started in the legislature in 1977. Since that time there has not been any type of initiative petition referendum for this bill. The bill originated in the House of Representatives in the State Senate. It originated in the legislature. It did not originate by a citizens initiative referendum.

It is interesting to note that the assertions are that the people have spoken on this issue. If you actually look at the totals, and I urge you to go to the State's website on tabulations of state elections, you will find something very interesting. You've heard the same record over and over again saying and playing, 'We voted on it two times, we voted against it, we don't want it again.' That's not exactly correct. This issue has really been voted upon, and the people have spoken on it, three times in a statewide referendum. Unfortunately, they forget about the referendum of 1995. If you take the vote of 1995, 1998, and 2000 and you take your calculator out, when all the votes are counted on those three elections, those who voted for anti-discrimination had more votes than those who voted anti-gay. The people did speak. If you take the totals, it was 50% to 49% for non-discrimination. To be exact, the vote was 673,727 votes were cast for anti-discrimination and 658,236 votes were cast by those who have an anti-gay position. Those are the figures. So don't let anyone try to tell you that the people have spoken twice and we don't need to take this vote again. Unless the citizen initiative bill begins in the legislature, it's really the vote in this body and the other body that should decide an issue such as this.

The Constitution has a provision that allows for what is known as a 'people's veto'. Yes, that veto has been exercised on two occasions, but it initiated with the people to put the vote out to referendum. This is about respecting and following a certain process. We are following that process, and if it comes down to a situation where this bill is signed into law, those who oppose this bill can exercise their constitutional right under the so-called 'people's veto' and bring this matter before the voters again. Unfortunately, ballot questions sometimes undermine democratic government. They have shown in the past some times to exploit the public's knee-jerk disdain for politicians, like us, in the process as a whole. They allow elected leaders, such as us, to abdicate their leadership and hide behind and hide from those tough issues. I know when I took the oath of office the first time when I was a young man, and as I took the oath of office again on December 1st of last year, I took the office because I believe that leaders are elected to lead. Real leaders don't hide behind ballot questions. Ballot questions give us, and I'll quote David Broder, 'Not a government of laws, but laws without government.' I urge you to vote in favor of the pending motion to indefinitely postpone.

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

Senator **SULLIVAN:** Thank you, Madame President, men and women of the Senate. Yesterday we discussed and debated this issue. I heard both sides of the aisle speak about civil rights. Civil rights. I ask you, in a democracy, when do we allow the

majority to vote for the civil rights of the minority? The very reason for a constitution, the very reason for laws, is to protect the minorities. Approximately 10% of our nation, and of the world, has a sexual orientation that is different from the normal. They are the minority and a constitution, in a free world, protects the minority. It's as simple as that. We, as lawmakers, set public policy. We are the only state in New England that does not say to its citizens that 90% of us will protect the civil rights of the 10% minority.

I'm proud of my faith. I was very moved by the Senator from Lincoln, Senator Dow, as he spoke of his faith yesterday. Yes, I was surprised to hear he had gone to seminary. That is the faith I know, the faith where you judge people by their deeds. I would ask us to vote for this motion to indefinitely postpone so that the 90% of us can ensure that 10% of this population is granted their civil rights. We are all created in God's image. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you very much, Madame President. With all good respect to my good friend from York, Senator Hobbins, I heard him speak on the radio this morning and enjoyed his talk. It made the miles pass by a little faster. Not that I was speeding.

I believe, though, with all respect for his intentions, the first vote that was taken was a completely different question than the last two. I think to add them all up together might, possibly, give you an incorrect answer. If my good friend is correct, why not send it to the people? Let them make the decision. I see nothing wrong with that.

I enjoyed his speech just a few minutes ago, too, because he spoke of going back to the people, the people's knee-jerk reaction, and all that type of thing. I had a politician a while ago tell me how wrong the people were about a different issue and I told him maybe I'd look in the mirror, maybe they were wrong about some other things. Anyways, Madame President, I'd urge a negative vote on this.

On further motion by same Senator, 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 Penobscot, Senator Plowman.

Senator **PLOWMAN:** Thank you, Madame President, men and women of the Senate. I sure wish I could roll all the votes in three different elections into some nice statistic and maybe change the balance of power in the Senate. Unfortunately, you only get to vote once in each election. That's the law. I know everybody here knows that.

Isn't it interesting how a citizen initiative makes people citizens and a people's veto makes them just people. They are really the same. They are our constituents. They want a voice in this. They have had a voice in this in the past. These numbers are pretty close. Every time I hear 90% to 10% I look back at the numbers that the Senator from York, Senator Hobbins, just gave me. I don't see 90 versus 10. I see a 2% margin. We all live under very close decisions. The Supreme Court makes them every day, 5 to 4. Some of my least favorite decisions that I live under have been decided 5 to 4. It doesn't mean that this is the way things are going to go. Most of the e-mail that I've gotten are

not from Gay people, they are from concerned citizens who want to be involved. The 90 - 10 is not how the vote is going to come out. I really think that this ought to go back to vote. I'm not hiding behind anything. My roll call is up there for everybody. It is the 9th year that I'll have roll call votes for people to look at. None of you get to hide. You take a position. You take it for whatever reason. I'm asking you to vote against this motion. There is going to be a debate. Let the debate start without having to have people run around and get 60,000 signatures.

As a little side note, the people who will be running around for signatures may be carrying another people's veto with them. I understand they are not happy about a majority budget either.

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

Senator **BARTLETT:** Thank you, Madame President. With all due respect to the Senator from Penobscot, Senator Plowman, I think the fundamental issue behind this amendment is who is going to bear the burden of persuasion heading into an election? Under a people's veto there is an existing law providing protection for those who fear discrimination. The burden is on those who wish to repeal that law, who wish to live under discriminatory laws, to bear the burden of proof. If we go the other way and say we're going to send it to the ballot box, there is no legal protection or process. The burden then falls on those who are discriminated against, those who are repressed, those who are being fired from their jobs because of their sexual orientation to bear the burden of trying to persuade others to support their point of view. Just imagine a situation where you have say, a phone bank staffed by people who are supportive of anti-discrimination laws, based on sexual identity or sexual orientation, and imagine making a call and you happen to hit a co-worker who recognizes your voice. Maybe your boss, even. You show up the next day at work and you are fired because the law doesn't protect you. By enacting this directly and putting the burden on those who would discriminate, we're providing protection for the very group who is seeking redress so that they cannot be fired, they cannot be denied housing or other accommodations, simply because of their sexual orientation or because they are promoting their own rights. To me, that is a fundamental difference that makes this so different than most other issues that we deal with. For that reason I urge you to vote in favor of this motion.

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

Senator **SCHNEIDER:** Thank you, Madame President. So many eloquent words have been said about this issue, but I feel it's important enough for me to stand and share with this body that I've received, by far and away, the vast majority of constituent, by phone, fax, e-mail, and in person, overwhelming support for this move to protect people's sexual orientation. I also think it's really important to note that even if you are perceived to be Gay you can be discriminated against. It can be used as an excuse.

I do want to share with you an e-mail I had received from somebody who does oppose this and my response to the opposition. One of the notes that were made was about special rights. I said, 'Thank you for your opinion. The rights that you speak about being 'special' are the same 'special' rights that I am protected under the law so that I'm not discriminated against by others just simply because of my gender. I assure you the

pending legislation is not about marriage,' which this individual did bring up. 'I don't believe government should tell our religious institutions what marriage is or is not. Government should stay out of the business of our churches. Regardless of one's belief, no one should be turned away from, for example, getting a bank loan just because one is female or one is of a different religion of the person taking that bank loan or is a homosexual. On this Easter Day,' it was about 11 o'clock at night when I was responding to this e-mail, 'I pray for kindness, unconditional love, peace, and all the wonderful qualities Jesus embodies.' In general, I do my best to walk a mile in the other person's shoes. If one person is discriminated against, I think but for the grace of God there go I. This is the way I am moved to live and I would support the motion to indefinitely postpone and I encourage you to stand up and recognize that but for the grace of God there go you. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you, Madame President. I referred to the bill yesterday that was before us and we are addressing this morning and the motion, in a sense, as a concern for the expression of the wording of the bill where it says 'gender identity' or 'expression or perception' of that. I've heard a couple of comments made this morning that offend me and I'd just like to make a comment about that, if I might.

Those who have stated to us that, if we oppose this bill and oppose the motion, we might be anti-gay or discriminatory. From my perspective, it is entirely not true. I'm opposing the motion before us because I feel the wording of this bill is not the wording that I would like to see go forward. It is not an expression of being anti-gay. It is not an expression of being discriminatory. I am offended that somebody would make that accusation. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from York, Senator Hobbins to Indefinitely Postpone Senate Amendment "A" (S-44). 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 (#29)

YEAS: Senators: **BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, DOW, GAGNON, HOBBS, MARTIN, MAYO, MITCHELL, NUTTING, PERRY, ROSEN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS**

NAYS: Senators: **ANDREWS, CLUKEY, COURTNEY, DAVIS, HASTINGS, MILLS, NASS, PLOWMAN, RAYE, SAVAGE, SNOWE-MELLO, WESTON, WOODCOCK**

22 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **HOBBINS** of York to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-44), **PREVAILED**.

On motion by Senator **PLOWMAN** of Penobscot, Senate Amendment "B" (S-48) **READ**.

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

Senator **PLOWMAN:** Thank you, Madame President, men and women of the Senate. As this bill moves to the other body and probably to enactment, I'd like to talk about what's going to happen at the Human Rights Commission. Every year we have a huge amount of participation, or every two years when we take up the bill, with people that have a belief or a perception that they have been discriminated against. This amendment says you need to put your money where your mouth is. If you think that you have been discriminated against, take your case to the Maine Human Rights Commission but just don't take anybody willy-nilly because if you lose then you are going to have to pay the cost of the people that you've taken there. It's known in Canada as loser pays and it helps their system a lot. That is my amendment. I'd like to put it forth for your consideration because the wording here is going to have to be interpreted by somebody somewhere. It's going to go, I guess, to the Commission and be fought out by the lawyers because there is a lot of murkiness around the definitions that we were given. When asked, members of the committee told me that there wasn't a lot of discussion in committee regarding that wording. What I'd like to do is put a little onus on the people who make the claims; they are going to have to be able to prove it when they get there. I ask you to support my motion. Thank you.

Senator **HOBBINS** of York moved to **INDEFINITELY POSTPONE** Senate Amendment "B" (S-48).

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

Senator **HOBBINS:** Thank you very much, Madame President. I was a little taken back by this amendment, of course, because I didn't think that the debate what is known as 'tort reform' would begin so early during the process. This is a winner take all British system of tort reform, but I'd just like to pose a question. I don't mean this in any way to be disrespectful, because I just want to make sure that I get this amendment.

THE PRESIDENT: The Senator may pose his question.

Senator **HOBBINS:** Thank you. Is it the good Senator's intention that the loser pay provision only apply in cases that are brought before the Maine Human Rights Commission regarding matter of sexual orientation?

THE PRESIDENT: The Senator from York, Senator Hobbins poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Plowman.

Senator **PLOWMAN:** No, I didn't want to create a special class for this to be considered so I made it a general provision. If you

appear before the Maine Human Rights Commission, which is a very expensive place to be if you are a defendant, you need to be able to have a real good reason to be there. No, I did not set it up just for one category. It's for all. Thank you.

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

Senator **HOBBINS:** Thank you very much, Madame President. If I may, through you, Madame President, ask whether or not the amendment before us is germane to the bill with respect to how far it encompasses a provision that is outside the scope of this particular issue.

Same Senator inquired if Senate Amendment "B" (S-48) was **GERMANE**.

TABLED pending **RULING OF THE CHAIR**.

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, Highway Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2006 and June 30, 2007" (EMERGENCY)

H.P. 534 L.D. 739
(S "A" S-42 to C "A" H-72)

In House, March 24, 2005, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-72)**.

In Senate, March 28, 2005, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-72) AS AMENDED BY SENATE AMENDMENT "A" (S-42)** thereto, in **NON-CONCURRENCE**.

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

On motion by Senator **DAMON** of Hancock, the Senate **RECEDED** and **CONCURRED**.

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act To Amend the Economic Development Statutes"
H.P. 1055 L.D. 1503