

MAINE STATE LEGISLATURE

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

Volume II

First Special Session

May 26, 2005 – June 17, 2005

Second Special Session

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January 4, 2006 - April 6, 2006

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ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
SECOND REGULAR SESSION
17th Legislative Day
Tuesday February 14, 2006

The House met according to adjournment and was called to order by the Speaker.

Prayer by Reverend Carolyn Bradley, First Congregational Church, Millinocket.

National Anthem by David Bullard, Windham.

Pledge of Allegiance.

The Journal of Thursday, February 9, 2006 was read and approved.

SENATE PAPERS
Non-Concurrent Matter

An Act To Allow the Towns of Mapleton, Castle Hill and Chapman To Deposit All Tax Revenues, Grant Revenues and Other Income and Revenues into One Depository Account

(S.P. 648) (L.D. 1694)

PASSED TO BE ENACTED in the House on February 7, 2006.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-445)** in **NON-CONCURRENCE**.

The House voted to **RECEDE AND CONCUR**.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

Resolve, Authorizing Certain Land Transactions by the Department of Conservation, Bureau of Parks and Lands

(H.P. 1415) (L.D. 2015)

Sponsored by Representative TARDY of Newport. (GOVERNOR'S BILL)

Cosponsored by Senator NUTTING of Androscoggin and Representatives: ADAMS of Portland, CARR of Lincoln, DUPLESSIE of Westbrook, PIOTTI of Unity, Speaker RICHARDSON of Brunswick, Senators: President EDMONDS of Cumberland, MILLS of Somerset, SCHNEIDER of Penobscot.

Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** suggested and ordered printed.

REFERRED to the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** and ordered printed.

Sent for concurrence.

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 519 and Joint Rule 213, the following item:

In Memory of:

Elizabeth J. Betty O'Brien, of Portland, longtime resident of Portland. Mrs. O'Brien was born on Cliff Island and graduated from Portland High School. She worked for New England Telephone Company for 43 years. She was a life member of the Italian Heritage Center and a member of the New England Telephone Pioneers. She will be greatly missed and fondly remembered by her loving family and many friends;

(HLS 1561)

Presented by Representative CUMMINGS of Portland.

Cosponsored by Representative BRAUTIGAM of Falmouth, Representative MARLEY of Portland, Representative HARLOW of Portland, Representative BRANNIGAN of Portland, Representative EDER of Portland, Representative ADAMS of

Portland, Representative DUDLEY of Portland, Senator STRIMLING of Cumberland, Senator BRENNAN of Cumberland.

On **OBJECTION** of Representative CUMMINGS of Portland, was **REMOVED** from the Special Sentiment Calendar.

READ.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Cummings.

Representative **CUMMINGS**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. It is my honor today to talk on behalf of Elizabeth "Betty" O'Brien. Valentines Day, February 14th, is a very special day. It was her birthday and it was the day that she was married decades ago to James O'Brien. It is my honor today to say that this woman, who spent her entire life in Portland and grew up on Cliff Island, contributed immensely to Portland and reflects the best of this state. But, I think the most important and lasting memory will be what she did for her children and her family and it is my honor today to pass on our sympathies on behalf of the Portland delegation and to all of the legislators of the state and to the O'Brien family. Thank you.

Subsequently, the Sentiment was **ADOPTED** and sent for concurrence.

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

REPORTS OF COMMITTEE
Divided Report

Majority Report of the Committee on **TRANSPORTATION** reporting **Ought Not to Pass** on Bill "An Act To Require Insurance Companies To Notify the Secretary of State when a Motor Vehicle Has Been Insured"

(S.P. 682) (L.D. 1765)

Signed:

Senators:

DAMON of Hancock
DIAMOND of Cumberland
SAVAGE of Knox

Representatives:

MARLEY of Portland
FISHER of Brewer
McKENNEY of Cumberland
THOMAS of Ripley
BROWNE of Vassalboro

Minority Report of the same Committee reporting **Ought to Pass** on same Bill.

Signed:

Representatives:

HOGAN of Old Orchard Beach
COLLINS of Wells
SAMPSON of Auburn
MAZUREK of Rockland
PARADIS of Frenchville

Came from the Senate with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

READ.

On motion of Representative MARLEY of Portland, the Majority **Ought Not to Pass** Report was **ACCEPTED** in concurrence.

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

Majority Report of the Committee on **LABOR** reporting **Ought to Pass as Amended by Committee Amendment "C" (H-748)** on Bill "An Act To Prohibit the Use of Foreign Labor Unless a Federal Prevailing Wage Is Set"

(H.P. 873) (L.D. 1276)

Signed:

Senators:

STRIMLING of Cumberland
BARTLETT of Cumberland

Representatives:

SMITH of Van Buren
DRISCOLL of Westbrook
JACKSON of Allagash
HUTTON of Bowdoinham
TUTTLE of Sanford
CLARK of Millinocket

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:

Senator:

SNOWE-MELLO of Androscoggin

Representatives:

HALL of Holden
DUPREY of Hampden
CRESSEY of Cornish
HAMPER of Oxford

READ.

Representative SMITH of Van Buren moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

On further motion of the same Representative, **TABLED** pending his motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report and later today assigned.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(H.P. 1296) (L.D. 1856) Bill "An Act To Conform the Maine Tax Laws for 2005 to the United States Internal Revenue Code" (EMERGENCY) Committee on **TAXATION** reporting **Ought to Pass**

(H.P. 1217) (L.D. 1710) Resolve, Authorizing the State Tax Assessor To Convey the Interest of the State in Certain Real Estate in the Unorganized Territory Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-756)**

(H.P. 1220) (L.D. 1713) Resolve, To Direct the State Planning Office To Establish a Working Group To Standardize Accounting Standards at All Levels of Government Committee on **STATE AND LOCAL GOVERNMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-752)**

(H.P. 1295) (L.D. 1855) Bill "An Act To Establish the Securities Investor Education and Training Fund" Committee on **INSURANCE AND FINANCIAL SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-753)**

(H.P. 1301) (L.D. 1861) Bill "An Act To Improve the Ability of the Department of Corrections To Share Information Related to Clients in Order To Improve Treatment and Rehabilitative Services" Committee on **CRIMINAL JUSTICE AND PUBLIC**

SAFETY reporting **Ought to Pass as Amended by Committee Amendment "A" (H-751)**

(H.P. 1326) (L.D. 1886) Bill "An Act To Amend the Laws Pertaining to the Department of Corrections" Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-754)**

There being no objections, the above items were ordered to appear on the Consent Calendar tomorrow under the listing of Second Day.

CONSENT CALENDAR

Second Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the Second Day:

(S.P. 741) (L.D. 1942) Bill "An Act To Change the Name of Little Island to Chickering Island"

(S.P. 657) (L.D. 1740) Bill "An Act To Establish the Athens Standard Water District" (C. "A" S-444)

(H.P. 1209) (L.D. 1702) Bill "An Act To Increase Efficiency in Truck Hauling" (EMERGENCY) (C. "A" H-749)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were **PASSED TO BE ENGROSSED** or **PASSED TO BE ENGROSSED AS AMENDED** in concurrence and the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent for concurrence.

ENACTORS

Emergency Measure

An Act To Amend the Laws Governing Ferry Service Travel for Individuals with Catastrophic Illness

(S.P. 655) (L.D. 1738)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 131 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. **ORDERED SENT FORTHWITH.**

Emergency Measure

An Act To Prevent the Introduction of Pathogens into the State That Threaten the Health of Maine's Fish and Wildlife Resources

(H.P. 1272) (L.D. 1832)

(C. "A" H-742)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 135 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.

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

Acts

An Act Regarding Licensure Requirements for Nurses
(S.P. 669) (L.D. 1752)

An Act To Extend Tuition Waivers to Persons Who Have Resided in Subsidized Adoptive Care or Who Have Subsidized Guardians
(S.P. 672) (L.D. 1755)
(C. "A" S-442)

An Act To Address Emergency Licensure Procedures
(S.P. 673) (L.D. 1756)

An Act To Amend the Debt Collection Law
(S.P. 721) (L.D. 1804)

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. **ORDERED SENT FORTHWITH.**

Resolves

Resolve, To Facilitate Implementation of the Sports Done Right Program
(S.P. 26) (L.D. 84)
(C. "A" S-438)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **FINALLY PASSED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following item which was **TABLED** and today assigned:
Bill "An Act To Amend the Laws Dealing with a Work-restricted License"
(H.P. 1399) (L.D. 1997)

- In House, **REFERRED** to the Committee on **TRANSPORTATION** on February 7, 2006.
- In Senate, **REFERRED** to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** in **NON-CONCURRENCE**. **TABLED** - February 9, 2006 by Representative MARLEY of Portland.

PENDING - FURTHER CONSIDERATION.
Subsequently, the House voted to **RECEDE AND CONCUR.**

The following items were taken up out of order by unanimous consent:

SENATE PAPERS

Bill "An Act Protecting Youth from Losing Health Insurance Coverage"
(S.P. 777) (L.D. 2014)

Came from the Senate, **REFERRED** to the Committee on **INSURANCE AND FINANCIAL SERVICES** and ordered printed.
REFERRED to the Committee on **INSURANCE AND FINANCIAL SERVICES** in concurrence.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act To Exempt Vegetable Seeds for Home Gardens from the Sales Tax" (**EMERGENCY**)
(H.P. 1263) (L.D. 1823)

Signed:
Senators:
PERRY of Penobscot

STRIMLING of Cumberland
COURTNEY of York

Representatives:
HANLEY of Paris
McCORMICK of West Gardiner
WOODBURY of Yarmouth
CLOUGH of Scarborough
BIERMAN of Sorrento
SEAVEY of Kennebunkport

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-757)** on same Bill.

Signed:
Representatives:
CLARK of Millinocket
HUTTON of Bowdoinham
WATSON of Bath

READ.

Representative WOODBURY of Yarmouth moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Monmouth, Representative Smith.

Representative **SMITH**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative **SMITH**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Given two points, one that in Maine we do not tax food because it is a necessity and two, in Maine we value self reliance and independence; my question is why is it that a person can go to the store and buy vegetables without paying sales tax, but when buying seeds to grow their own vegetables they now must pay sales tax?

The SPEAKER: The Representative from Monmouth, Representative Smith has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative **CLARK**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. That is one reason why I signed onto the Minority Report, because of the same question that has been brought to you by Representative Smith. I have a problem that we don't pay any sales tax on the food or the vegetables themselves and now they want to have you pay tax on a seed to grow those same things that exempt them from buying in a store. I hope that you don't vote with the Majority Report. I hope that you do vote with the Minority Report and make justice where it is due. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Unity, Representative Piotti.

Representative **PIOTTI**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the pending motion. The Maine Legislature has the opportunity today to defeat this motion and correct a mistake and an injustice. This is a bill not about a new exemption, but about a product that had been exempted until last July. Since few people buy seeds between July and February we have a chance to correct the problem before most people in Maine even know that it is a problem.

You might ask how this exemption got removed? Well, it was part of a broad package of changes that were brought forward by the Appropriations Committee that that Agriculture Committee knew about, but as is often the case in these packages we don't know all of the details of everything and at least some of us

missed that this particular item was included. But I am not rising to rest blame, we should instead be trying to fix the problem.

Simply put, as has been mentioned by two previous speakers, it does not make sense to tax seeds that grow into food. Some people might say that this is small potatoes. This is a very small amount of money. The average consumer might expend two to three dollars a year on seeds. What is the big deal? Well, it is a big deal for some people and there are very low-income people who rely on vegetables that they grow for their own sustenance. It is also an important issue of what philosophy and approach we take to taxation. Third it is important for Maine businesses.

I don't know who realizes this, but Maine has a national reputation as a leader in the seed industry. Between Johnny's Select Seeds in Winslow and Fedco seeds in Fairfield and Clinton, we have a growing and significant seed industry that does not want to be burdened with this kind of extra taxation. I know the arguments that you might hear in support of this motion; that there are a lot of exemptions and we don't need another one. I humbly submit that this is different from that given that it was an exempted item until recently and, given the issue of food, I urge you to consider this differently and to vote to defeat the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Woodbury.

Representative **WOODBURY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. There certainly are reasonable arguments on both sides of this bill and I do want to speak for the Majority who believe that this bill adds to what really has become a clutter of tax exemptions in our sales tax code and the majority of us prefer not to add still another sales tax exemption to the many that already exist. That's it. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Bowdoinham, Representative Hutton.

Representative **HUTTON**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to clarify, again going back to what Representative Piotti said. This was an exemption; it existed last year. That is key. We are not creating a new exemption.

Let me tell you who it helps. I have a small farmer in Bowdoinham that doesn't sell crops, but sells some of her products from the animals that she raises. But she grows all of her own food, not only for herself, but also for the animals. At this point she is really not a farmer as far as crops go, but she has got to pay a sales tax on those vegetable seeds that she buys and that she uses for herself and for her animals. We are taking away her exemption this year and costing her money. This is our small businesses, our very, very small businesses and our own constituents who raise their own vegetables – a lot of you still have them – to feed themselves throughout the year. We are going to charge them tax on those seeds even though, as Representative Smith pointed out, they went and bought the vegetable all grown they wouldn't pay a tax on it. So, I think that this is something that we need to rectify to make sure that we don't take away this exemption. Thank you very much Mr. Speaker.

Representative **TRAHAN** of Waldoboro **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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 Scarborough, Representative Clough.

Representative **CLOUGH**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. There is another issue that I think needs to be brought to the forefront on this. There are actually a couple of things. One thing, when you buy seed for a home garden, how does the merchant know that that is for a home garden or whether it is going to be used to grow for a roadside stand or both? That is one question. The other issue that concerns me is that on the Taxation Committee for the past several years, and for the four years that I have been on it, we have been struggling to get to the point where we can do meaningful tax reform and I think that one of the things we should try to accomplish as we move along is not to keep changing and adding exemptions, but to get to the point where we can look at overall tax reform without offending a whole new constituency. So, I would ask you to vote in favor of the Ought Not to Pass Motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Unity, Representative Piotti.

Representative **PIOTTI**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just wanted to respond to something that the Representative from Scarborough, Representative Clough mentioned. He asked how we can distinguish, as a retailer, between seeds purchased by the home gardener and seeds purchased by a farm stand or commercial farmer. That is actually one of the reasons to vote against this motion. The farmer right now has an exemption and this would make it clear that the exemption applies to all vegetable seeds regardless of the purchaser.

The SPEAKER: The Chair recognizes the Representative from Hodgdon, Representative Sherman.

Representative **SHERMAN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise as a member of Agriculture and it would seem to me that what we are trying to do is correct a mistake that was made and I would say that this isn't small potatoes to some people who may represent a lot of cabbage and I wish we wouldn't get corny about our arguments and we should just turn up or turn down the Majority. Thank you.

The SPEAKER: The Chair recognizes the Representative from Frankfort, Representative Lindell.

Representative **LINDELL**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **LINDELL**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am curious if anybody might know whether this would also include an exemption for fruit. Tomatoes are, after all, fruit. They are biologically fruit and many gardeners purchase seeds for tomatoes. Does this just exempt vegetables such as squashes and pumpkins and that sort of thing or does it not exempt fruit?

The SPEAKER: The Representative from Frankfort, Representative Lindell has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Yarmouth, Representative Woodbury.

Representative **WOODBURY**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. My understanding is that this exemption would apply to vegetable seeds only.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. In answer to Representative Lindell's question, the Committee Amendment on the Ought to Pass bill deleted the word vegetable and just talked

about the word seeds, recognizing the fact that tomatoes are fruit and other distinctions.

The SPEAKER: The Chair recognizes the Representative from China, Representative Thompson.

Representative THOMPSON: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I will be voting no on this Ought Not to Pass motion. When you think of this, I want you to think of "victory gardens" because that is really what it is. The seeds grow items that we put into ball jars and root cellars. When you are land rich and cash poor, every day of sunshine and every drop of rain, every penny that you spend on your groceries, makes a difference. For the people in my district this would make a difference, so I urge you to vote no on this Ought Not to Pass. Thank you very much.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 366

YEA - Barstow, Beaudette, Bierman, Bowles, Clough, Crosthwaite, Cummings, Daigle, Dudley, Hanley B, Kaelin, McCormick, McKenney, Millett, Ott, Richardson M, Richardson W, Seavey, Tardy, Woodbury.

NAY - Adams, Annis, Austin, Babbidge, Berube, Bishop, Blanchard, Blanchette, Bliss, Bowen, Brautigam, Brown R, Browne W, Bryant, Bryant-Deschenes, Burns, Cain, Campbell, Canavan, Carr, Cebra, Churchill, Clark, Collins, Craven, Cressey, Crosby, Curley, Curtis, Davis G, Davis K, Driscoll, Duchesne, Dugay, Dunn, Duplessie, Duprey, Eberle, Eder, Edgecomb, Faircloth, Farrington, Finch, Fischer, Fisher, Fitts, Fletcher, Flood, Glynn, Goldman, Grose, Hall, Hamper, Hanley S, Harlow, Hogan, Hutton, Jacobsen, Jodrey, Joy, Koffman, Lansley, Lerman, Lewin, Lindell, Lundeen, Makas, Marean, Marraché, Mazurek, McFadden, McKane, McLeod, Merrill, Miller, Moody, Moore G, Moulton, Muse, Nass, Nutting, Paradis, Patrick, Percy, Perry, Pineau, Pingree, Pinkham, Piotti, Plummer, Rector, Richardson D, Rines, Robinson, Rosen, Sampson, Saviello, Schatz, Sherman, Shields, Simpson, Smith N, Smith W, Stedman, Sykes, Thomas, Thompson, Trahan, Twomey, Valentino, Vaughan, Walcott, Watson, Webster, Wheeler, Mr. Speaker.

ABSENT - Ash, Brannigan, Emery, Gerzofsky, Greeley, Hotham, Jackson, Jennings, Marley, Mills, Norton, O'Brien, Pilon, Richardson E, Tuttle.

Yes, 20; No, 116; Absent, 15; Excused, 0.

20 having voted in the affirmative and 116 voted in the negative, with 15 being absent, and accordingly the Majority Ought Not to Pass Report was **NOT ACCEPTED**.

Subsequently, the Minority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "A" (H-757) was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, February 16, 2006.

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

On motion of Representative CUMMINGS of Portland, the House adjourned at 11:21 a.m., until 10:00 a.m., Thursday, February 16, 2006 in honor and lasting tribute to Elizabeth J. Betty O'Brien, of Portland.