

April 24, 2013 -

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act To Ensure the Confidentiality of Concealed Weapons Permit Holder Information" (EMERGENCY)
H.P. 250 L.D. 345

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-89)**.

Signed:

Senators:

VALENTINO of York
BURNS of Washington
TUTTLE of York

Representatives:

BEAULIEU of Auburn
CROCKETT of Bethel
DeCHANT of Bath
GUERIN of Glenburn
MORIARTY of Cumberland
PEAVEY HASKELL of Milford
VILLA of Harrison

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "B" (H-90)**.

Signed:

Representatives:

PRIEST of Brunswick
MONAGHAN-DERRIG of Cape Elizabeth
MOONEN of Portland

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-89)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-89)**.

Reports **READ**.

Senator VALENTINO of York moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-89)** Report, in concurrence.

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

Senator VALENTINO: Thank you Mr. President. Members of the Senate, I stand today to urge you to support the Majority Report. As with many bills that come before our various committees, L.D. 345 has changed from its original printing. It has changed for one, and only one, reason. Not because of the lobbying or the politics, but because of the thoughtful, thorough vetting that was done by the Judiciary Committee. Over the last month this bill has had several work sessions and multiple drafts in order to craft fair, needed legislation in light of our current technology. I am proud of the bi-partisan Majority Report that was endorsed by five members of my side of the aisle and five members of the other side of the aisle. It was also endorsed by all three members of this Body who serve on the Judiciary Committee. On February 12th this bill first appeared on the calendar to be referenced. It was Tabled. A discussion was held during the next week on where the bill would be referenced. Ultimately, leadership on both sides of the aisle agreed to send it to the Judiciary Committee because this is a bill about privacy. This is not a bill about guns. In January this Body was confronted with an Emergency bill to grant temporary privacy protection to holders of concealed

handgun permits. This temporary provision in law will expire on April 30th. That is in six days. If we do not pass this bill with an Emergency two-third vote then all information on concealed handgun permits will become public as per existing law prior to the moratorium. Based on the massive testimony we heard at the public hearing, I do not think anyone wants that to happen. If the bill does not pass with an Emergency Preamble then there will be a gap between May 1st and May 20th for the 90 days after adjournment.

Why should you vote to make the information confidential when it has been public for over 30 years? In 1981 the 110th Legislature passed "An Act to Establish Guidelines for the Issuance of Concealed Weapon Permits." That bill has changed very little over the years. It kept all the information on the application for the permit to be confidential, but the information for the actual permit issued is public. You may hear in later speeches after mine that many of the same people who now want to make the information confidential supported making it public in 1981 and, therefore, they are flip-flopping on their position. I would say that it is no longer 1981. The internet, smartphone, and lightning fast information searches have intruded into every facet of our lives. When this bill was first introduced I never imagined I would vote for it. Then we had the public hearing and I was stunned. Yes, we had the usual groups advocating for the bill, but then we had the Maine Coalition to End Domestic Violence testify in support of the bill. They specifically asked that the information about who carries concealed weapons be confidential. They stated that dangerous abusers routinely search for their victims who have fled to safety in another location by accessing public data bases. In a recent letter we received from the Maine Coalition to End Domestic Violence after they saw the final Majority Report, they wrote in brief, "We are grateful for the attention paid to the needs of survivors of domestic violence, dating violence, and stalking that is reflected in both of these amendments. We find the Judiciary's Majority Amendment to be a clear, straight forward way to address our concerns about protecting the confidentiality of identifying information of permit holders without creating unintended consequences or a lack of clarity or consistency in its implementation." The National Association of Social Workers wanted the information to be confidential, as did the Maine State Police, the Maine Chiefs of Police Association, the Maine Municipal Association, and various police departments. Women who had been in abusive relationships, or had been stalked, wanted the information to be confidential. The City of Bangor even passed a Resolve stating that, "The City of Bangor takes a position in favor of passage of L.D. 345." Their Resolve states that making personal information available to the general public is undue and unnecessary invasion of personal privacy, creating a potential risk to the permit holder and that there is no significant public health or safety interest in making such personal information available to the general public. The City of Bangor.

What does the bill do? There are two very distinct parts in the bill. Section 1 changes Title 25. The title has now changed on the bill. The title used the word "weapons," the actual title of the permit is "handgun." We also added the word "personal" before "information" because some of the information will be public. Just personal information will be confidential. The Emergency Preamble was attached so that we could deal with the situation on April 30th. It also cleans up old language under the application process and it does state that the permit is now confidential except for the municipality of residence, the date the permit was issued, and the date the permit expires. That means that name, address, physical description of the permit holder, signature, and those permits that contain the date of birth will now be confidential. Just that information. It allows the disclosure of confidential information for criminal justice purposes or permitting purposes to law enforcement officers and issuing authorities. It also allows the applicant to waive confidentiality by written notice to the issuing authority. That is part 1.

Section 2 is unallocated language in the bill which will provide public and law enforcement with valuable statistical information that has never been gathered before on a statewide level. This piece was extremely important to law enforcement officers. Information such as the number of permit applications, permits issued, applications refused or denied, and suspensions and revocations will be able to be sorted by gender, age category, municipalities, zip codes, and others. It will also look at having one standard concealed handgun permit, like a driver's license, instead of having different towns designate their own permits. The plan and report will be drafted by the Chief of the State Police in conjunction with the Maine Criminal Academy and then will be brought back next session and reviewed by the Criminal Justice Committee, who may report legislation. Why is this info so important? I asked, several minutes before this hearing, "How many people have concealed weapons?" in order to get that information, anticipating that question, from somebody in the audience. The answer by the State Police was, "We don't know." The State Police do not have the numbers from other issuing authorities. The State Police issue about 16,000 resident concealed handgun permits and 8,000 non-resident concealed handgun permits. They do not know because we have no aggregate data that anybody compiles from other towns. I asked, "How many people do you have in the address confidentiality program?" Their answer, the State Police do not keep statistics about the address confidentiality

program. We know, antidotally, of two recently cases in which applicants have filed for a concealed handgun permit and asked for those addresses. This is important information for us to gather statistically, on a statewide basis.

Some behind me may stand today and say the public has a right to know, that in order to promote transparency this information should be available under the Freedom of Access Act. I would counter that the Freedom of Access Act was originally constructed to promote transparency in government, not in the personal habits of individuals. I would also like to read from testimony from the ACLU, who opposed this bill, not on this bill but on another bill. In their testimony on that bill, "Maine's Right to Know laws are not designed to reveal personal information about members of the public who do not serve in government to the broader society. In an age of identity theft, aggressive and coercive marketing and sales tactics, and significant invasions of personal privacy, it is more important than ever that government safeguard any personal information of the citizens that falls into government hands." That was the ACLU of Maine, dated February 2013. FOIA requests are intended to ensure accountability of the government while protecting the privacy rights of individual citizens.

Despite skepticism by some that the bill was an attempt to skirt Maine's Public Access Laws, every single member of the Judiciary Committee agreed in some form or the other to increase the confidentiality of the current statutes that we have. Before the Judiciary Committee could report out the bill, we had to take the extra step of analyzing whether or not the majority of the committee determined that the bill met the criteria for FOIA exceptions. We have a form that we need to fill out. According to OPLA reports, Maine already has 379 public record exceptions to FOIA. The committee determined that this did meet the FOIA exception, based on the following criteria: the proposed exception protects an individual's privacy interest and that interest substantially outweighs the public interest in disclosure, the public disclosure could jeopardize the safety of a member of the public or the public in general and that the safety interests substantially outweighs the public interest in the disclosure of record, and that the proposed exception is as narrowly tailored as possible. The Majority Report is the only report that automatically allows the permit holder privacy without having to go through additional steps or do additional paperwork or prove that their safety is in danger. The Majority Report is the only report that addresses a mandate, up front, that clearly states everyone has to do this, but it is confirmed in previous letters from the Maine Municipal Association that there is insignificant cost to this. The Majority Report is the only report that has Emergency Preamble to address the pending expiration on April 30th of previous legislation passed. Please join me and the bi-partisan ten members of the Judiciary Committee and vote to pass the Majority Report. Thank you.

On motion by Senator **KATZ** of Kennebec, 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 Washington, Senator Burns.

Senator **BURNS:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise today in support of this Committee Amendment. It seems like it's been a long time since this bill came to us and when I first started getting calls over the weekends from my towns saying that people were asking for copies of their concealed weapons permits. After that there was a great rush from everybody to try to react to this. The final analysis is that we end up with this bill that is in front of us here today to meet what we thought was an emergency situation, which, by the way, we took action in this Chamber and the other Chamber to give us time to work through this process. I sat up last night writing testimony for this. I should have known better. The good Senator Valentino has given you all kinds of data and information as to how we got to this process. Her testimony certainly covered everything. There are just a couple of things I want to reiterate. I sat through this process, and it has been a process. As with all of your committees, it seems like some things take on a life of their own. This bill certainly has done that. Once again, this bill boiled down to two different things for me; the privacy issue and an effort to collect data, which is valuable to the public welfare. I think the privacy issue, to me, was very clearly demonstrated when we had an overwhelming, and I don't remember the numbers but I know it was overwhelming, support for this bill. By the way, the original bill, I thought, was a pretty good bill. I believe, in the final analysis, this is a better variation of it. There was overwhelming support for this bill to protect people's privacy and very very few opponents to it. I was also moved by the testimony and the passion involved in this and people's desire to protect their privacy and home and not have this type of information disseminated widely.

I was very comfortable that our committee was dealing with this, as far as the privacy aspect. There was another aspect to this, and that is the importance of data collection. In fact, I've co-sponsored another bill that has similarities to this. I thought that we had been missing for some time that type of consistency in data collection in one central repository to

provide the state with this valuable statistical information. I think this bill speaks to that because it provides for a plan for the State Police and the Criminal Justice Academy to come up with a plan to have consistent collection of data throughout the state for this process and then report that information to the appropriate committee, which I believe is the Criminal Justice Committee, that deals with the oversight of the issuing of these permits. I think it has met two very important goals here. I think a lot of interests have been satisfied. There is always going to be the naysayers, but, as we have been reminded this morning, the main purpose of FOIA laws are to provide transparency in government, not to intrude on the privacy of law abiding citizens, individual citizens. I think accomplishes both of those goals. There are many things that we can say about this, but I think Senator Valentino has covered most everything. I think it's very important. This goes a long ways to meeting the criteria that we should have been meeting some time ago in this state in order to be contemporary with our neighboring states, which also have these processes. This will help us in that effort, I think. I strongly urge you to support this amendment and thank you very much, Mr. President.

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

Senator **GERZOFSKY:** Thank you Mr. President. Ladies and gentlemen of the Senate, I rise in opposition to this bill today. I've listened very carefully to the Committee Chair, who I have so much respect for and I have a tremendous amount of respect for the committee work that went into this. I think they held good long hearings. I think they did as much as they could to peel back the artichoke, the onion, leaf by leaf to find out just exactly how to do what they were tasked to do. I also remember some of the history. I'm not going to go back to 1917, when we got our first concealed weapon permits. I'm not that old. I do like to talk about history. I do like to remember that there was a time in the early 1980's when I worked here. I can remember standing by those double doors and up in the balcony and listening to a debate back then on this very same issue. That debate was led by Charlie Pray, who was a very well-known sportsman and owner of sporting camps. He was a very strong supporter of concealed weapon permits and hunting and guns. I remember at the time SAM, before the current leadership of SAM, was at the table back then wanting to have this permit process that we have now. I remember the NRA at the time being very strong supporters because they knew that the alternative was not having permits, not carrying concealed. At the time the debate went between the House and the Senate to set up a system that the people were actually going to have a relationship. It wasn't just going to be Big Brother, just the government, that concealed all these things and they were the only ones with the information. I think that given that kind of power to the state, part of this bill is doing something that my committee had been very very capable of doing, and so has Transportation given the State Police another assignment. We don't fund them for it. We don't give them extra personnel. We just tell them to do it. We want them to collect the data from almost 400 municipalities throughout the state to find out where all these concealed weapon permits are. I thought that that was something that we never wanted to do, to get a centralized data base of who's got a concealed weapon and who doesn't. I find it a little bewildering now that we do.

We have confidentiality laws on a lot of different issues, but we also have ways for people to get information. I don't have a power of attorney on my mom, who will be up here for Welcome Back Day, but if I need to know what's going on with her health I can certainly talk to the doctor because I'm her son and I have a reason to know. I think that if somebody wants to know if I have a concealed weapon or not they could start, I guess, with Brunswick, or go to the State Police. They could look hither and dither all over the state of Maine and try to find out if I have one or not. We don't have a central data base. That's why the newspaper in Bangor couldn't get a response. Over the years, in Criminal Justice and Public Safety, we have looked at concealed weapon permits and we have siloed, taken groups of people and put them in siloes. Their information would not be made public. If you had reason to believe that you were in danger in any way, all it took was a telephone call. Call up the State Police and say, "I have a concealed weapon permit, I don't want any of that information given out and this is why." They wouldn't. If you were a victim of domestic violence, your private information, your address and everything, was taken off there. A phony address was put in its place. We set that up. We, in Criminal Justice, have been siloing information. Judges, jurists, and people that had reason to be taken off. I have asked personally, as my committee has, every Commissioner of Public Safety, every Colonial of the State Police, if there was anything broken. It was one of the questions that my committee members know I asked, if it wasn't broken then why we were going to fix it. They had told me over the years that there was nothing really broken. We don't have anybody asking and we won't give out this information on certain people. Sometimes even if they don't ask us not to give it out it's not given out, we won't give it out.

I know why this bill was brought here. It's because of an incident that happened far away from our state. Then one of our publications, a very well respected newspaper, reacted to that and we reacted to that. It's a reaction to a reaction to a reaction that never really had anything to do with our state. It never really had anything to do with our people. It never really had anything to do with us. We had not had any problems. If we ever had a problem with confidentiality, things leaking out or things not being appropriate, we would have heard about it and dealt with it as a state problem. Over the years we've never had a negative response. There was no problem until a tragedy in Connecticut triggered a lot of response. We're going to be debating a lot of issues because of a tragedy that happened in Connecticut. I don't want to see the people of the state of Maine get shortchanged in the process.

I care more about the people in this state having access for certain reasons and certain information, and not just in the hands of Big Brother. I'm part of government. I'm a Senator. Best job I've ever had in my life was working here. It's just nice to be able to work around all you elected officials and talk to you. I just love thinking I had some sort of say in your legislation that I never had. Best job I've ever had is working for the government. It's the last group of people I want to have sole control over my information. The last group I want to have sole control over everybody's information. Let me tell you, let me just say, we ask the State Police to do a lot of work. We don't hesitate. They get the job done. Don't forget that every time they have to do a new chore for us they are doing less on something else. We've asked them to bring back all the information that we've always said we didn't want, put it in a central depository that we've always said we didn't want, and bring it back to a committee so that they can put in future legislation which will probably not be what we're going to want. With a little bit of luck I'll still be here to argue about why we really don't want that either. I would hope that today we would represent the people of the state of Maine and those 16,000 in-state concealed weapon permit holders that State Police state that do. I don't know how much I want to protect those 8,000 out-of-state people that I don't know, don't have a clue of what authority gave them a permit, and not having a clue if they have, as we do on ours, a good moral character clause that actually means something and is actually defined. I don't know if I want to protect them. I don't know if I want to not be able to know a little bit about who they are and where they come from and what they do. Ladies and gentlemen, I stand today in opposition of this bill. I'm not in opposition to the committee that worked on it. I'm not in opposition to my friends in this Chamber that worked on it. I have sat on committees with some of these people. My Senate friend, Senator Burns, and I sat on Criminal Justice together for several years. Sometimes we debated each other and sometimes we supported each other, but we always had a good time afterwards having a Coke. At the end of this debate today I expect that we are going to be able to do that. I'm not going to sit in my seat and support something or keep my mouth quiet on something I don't support because I'm going to support the people of my district and that they have the right not to just have the government know that information, but for certain instances and for certain reasons and at certain times to be able to apply for that information and get that information; not as a blanket but having a reason. The Minority Report talks about that. We don't have that report in front us so I'm not going to be debate it or discuss it and that's why I haven't, Mr. President. I want people to know that I'm going to stand here, I'm going to debate it, and I'm going to sit down and hope that you'll follow my light. I hope that we can make some sense out of this. Thank you very much, Mr. President, for your time and the Senate for their patience.

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

Senator **KATZ:** Thank you Mr. President. Men and women of the Senate, I rise in brief support of the Majority Report. It is difficult to follow the restrained remarks of my good colleague from Cumberland County, Senator Gerzofsky. To me, this is a privacy bill, Mr. President. If you think about the basic beliefs that we share together, one of them is certainly personal privacy. We want to be free from others knowing our business, whether it's the government or other individuals. Second, we all believe in open government. We want government to operate in the sunshine. We want government records open to everyone and to be transparent. Sometimes, Mr. President, as here today, those two come into conflict. The question is how do we resolve those two competing interests? That was the difficult task the Judiciary Committee had to grapple with. I think as you heard from the good Senator from York County and the good Senator from Washington County, they have done a fine job at balancing those competing interests. They presented us with a carefully crafted compromise that speaks well of their ability to work together in a bi-partisan way. Mr. President, almost 400 times the Legislature has come down on the side of personal privacy in issues like this. I think we ought to do the same here today. I urge adoption of the Majority Report. Thank you, Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from York, Senator Valentino to Accept the Majority Ought to Pass as Amended by Committee Amendment "A" (H-89) Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#47)

YEAS: Senators: BURNS, CAIN, COLLINS, CUSHING, DUTREMBLE, FLOOD, GOODALL, GRATWICK, HAMPER, HILL, JACKSON, JOHNSON, KATZ, LACHOWICZ, LANGLEY, MASON, PATRICK, PLUMMER, SAVIELLO, SHERMAN, THIBODEAU, THOMAS, TUTTLE, VALENTINO, WHITEMORE, WOODBURY, YOUNGBLOOD

NAYS: Senators: BOYLE, CLEVELAND, CRAVEN, GERZOFKY, HASKELL, MAZUREK, MILLETT, THE PRESIDENT - JUSTIN L. ALFOND

27 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator VALENTINO of York to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-89)** Report, in concurrence, **PREVAILED.**

READ ONCE.

Committee Amendment "A" (H-89) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-89)**, in concurrence.