

TRANSCRIPT OF SENATE FLOOR DEBATES - SENATE BILL 476 - MAY 25, 1989

Senate Bill 476, the bill to be entitled An Act Relating to Firefighters. Senator Malchon.

Sen. Malchon

Thank you Mr. President. What this bill does would be to require that anyone who is employed as a firefighter would have been a nonsmoker for one year previously. There has been a case testing the constitutionality of this. It has been ruled that it does serve a public purpose. It is supported by the Department of Administration, the Firefighters, and local government. It is a safety and health factor. Half of the on-duty deaths of firemen are a result of cardiovascular incidents which are exacerbated by those who smoke. Also they are subject to intense physical stress and smoking inhalation and if they are impaired in their breathing ability they are not only at risk to themselves but they are a danger to their fellow firefighters who depend upon them to perform.

Is the House Bill here?

I did not know that. Alright, take up the House Bill. It's identical.

President

Okay without objection read the House Bill.

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Mr. President I'm directed to inform the Senate that the House of Representatives has passed House Bill 1456 and requests the concurrence of the Senate. House 1456, a bill to be entitled An Act Relating to Firefighters. House Bill 1456.

Any questions of the sponsor, Senator Langley.

Sen. Langley

Thank you Mr. President. Senator, I assume the rules provide that prospectively they have to continue to refrain from the use of tobacco.

Sen. Malchon

Yes.

President

Okay. Any further questions of the sponsor.

Mr. President, Senator, W.D. Childers.

Sen. W.D. Childers

Mr. President, Senator, what about smokeless tobacco.

Sen. Malchon

Smokeless tobacco. I'm not sure whether that would -- I think it applies to the nicotine smoke which causes the physical impairment and the tars.

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Sen. W.D. Childers

So they would not be able to use smokeless tobacco. Okay they must sign the sworn affidavit that they have not used the smokeless tobacco or any tobacco products for one year prior to application.

Sen. Malchon

That's correct.

President

Any further questions of the sponsor, Senator Dudley?

Sen. Dudley

Mr. President, if the sponsor would yield -- what is the public policy behind this particular prohibition and is this a mandate that's going to adversely affect local governments and cost more money realistically, what's the public policy?

Sen. Malchon

The public policy is that it reduces absenteeism, health care costs, death benefits and all of those sorts of things. It also provides for better safety for all fire personnel.

Sen. Dudley

Well then would you accept an amendment that would say that they also cannot be users of alcoholic beverages since that is also a health care issue and a further amendment, Senator, that they

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not be overweight because of the high risk of heart failure, that . . . Well, I could put myself in that category, but I'm not applying for a job yet to be a firefighter. I just wonder if we shouldn't put all these health care risks qualifications in and as a matter of public policy just limit it to tobacco use.

Sen. Malchon

Uh, the fact is that smoking does impair breathing and contributes directly to cardiovascular incidents. We have information that has a direct correlation on that. Since firefighters are placed in situations where they are not only under the physical stress but are also in the situation where their breathing can be further impaired by smoking inhalation, and so there is a direct correlation which has been established there which is not, as far as firefighters are concerned, as directly related at the alcohol and the overweight situation.

Sen. Dudley

Senator, does the study also show that the first time that a firefighter goes out to fight a fire and suffers, as many of them do unfortunately, from smoke inhalation, some of which is generated

by combustible materials such as materials that generate poisonous gas, does the study show that the first time they confront that situation that they have probably done more damage to their lungs than perhaps smoking would have done. Would they then have to quit -- is what I'm saying the first time they face a fire and suffer smoke inhalation, the damage is their lungs.

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Sen. Malchon

Uh, that is very possible. I don't have information on the incidents of that. What we do have the information on is that when they are faced with that situation a smoker is at far greater risk than a nonsmoker not only for his own well being but in being able to perform his job -- which is essential to his fellow firefighters.

Sen. Dudley

And my last question was, and I'm sorry I had to run them all together on you there, what's the cost to local governments who are the ones who are hiring these firefighters, what's the increased cost, if any, going to be to local governments, what's the impact?

Sen. Malchon

There is no increased fiscal impact. As a matter of fact it is estimated there will be a decrease.

Sen. Dudley

But this is a mandate on local governments is it not?

Sen. Malchon

Yes, it is a mandate but it is one that they support.

President

Senator, Woodson-Howard

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Sen. Woodson-Howard

Thank you Mr. President, uh, if I may ask a question of the sponsor, do you know that I've always supported all of the clean air bills that have gone through and I'm adamant about the safety and health factor, but I have a question about public policy and that is in the area of the local government's right. Does the local government have the right at this point to impose this condition when they're doing the hiring?

Sen. Malchon

My understanding is they do have that right and some have already exercised that right.

Sen. Woodson-Howard

Then if I may, my next question would be then, why do we need to impose it at the state level if they have the right to do it already?

Sen. Malchon

Uh, it is because we feel that it is going to be a good public policy throughout the state to make sure that the safety of all firefighters is protected and we can reduce health care costs, pension benefits and so on. The Department of Administration is strongly supporting this bill.

President

Any further questions? Senator Davis.

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Sen. Davis

Senator Malchon, is it not true that workers' compensation has been directly affected by this bill because of the fact that a lot of firefighters claim that their lungs have been hurt by smoke inhalation when in fact it's because of the fact they've been smoking cigarettes. There is substantiation that this will reduce all costs to local governments by reducing these claims.

Sen. Malchon

Yes, Senator Davis.

President

Senator Forman.

Sen. Forman

I guess I'll never be a fireman because I haven't quit smoking yet, but I think this is purely a health issue. It is also a cost effective issue when it comes down to local government. After a fireman experiences a fire, when they inhale -- not only can they get smoke inhalation but they can get blood gas poisoning also. Those medical costs go up and up and up. On the issue Senator Dudley brought up about alcoholism, most of your professional policeman and fireman lay off the booze and don't smoke. Some of them may but most of them these days don't. So as far as cost to local government it ought to save them a lot of money on insurance cost and health care cost and I think it's a good bill.

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Move the bill Mr. President.

President

Amendment on the desk, read the first amendment.

Clerk

By Senator Johnson, on page 1, line 14, strike all section, insert section 6, the State Fire Marshal may consider by rule the use or nonuse of tobacco or tobacco products as a condition of employment as a firefighter.

President

Senator Johnson.

Sen. Johnson

Mr. President, I don't believe this legislature has any business in the development of criteria for employment of firefighters or other personnel as a standard, and what this says is that the State Fire Marshal, who we have empowered to undertake all firefighting activities and control in Florida, may by rule consider the use or nonuse of tobacco products as a condition of employment as a firefighter. It's a very simple issue, very simple issue whether we are going to mandate it by law or require the person that we have empowered with this authority to do it by rule. So that's what the amendment does. I move the amendment.

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President

Debate on the amendment, Senator Langley.

Sen. Langley

Mr. President, might be of interest to the Senators to know what tobacco products are, I finally found the definition. It wasn't under tobacco but it is in the Taxing Law, and tobacco products are, by definition means loose tobacco suitable for smoke and snuff, flower cabin, dish, plug or twist tobacco, fine cuts and other chewing tobaccos, refuse, scraps, clippings, cuttings and sweepings of tobaccos and other forms of tobacco prepared in such a manner for tobacco chewing. Tobacco products does not include cigarettes.

President

Any further discussion.

Senator Malchon.

Sen. Malchon

I would just ask to defeat the amendment.

President

Any further debate on the amendment?

Senator Johnson?

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Sen. Johnson

Senators, what this law says very clearly is that you are going to cause a lot of people to be unemployable when they're going to inhale more smoke than fire than they would inhale all their lives by smoking cigarettes or using other tobacco items as explained by Senator Langley -- and what this amendment simply does is to put in the hands of the State Fire Marshall -- that's where it ought to be. The State Fire Marshall is empowered by law to control all these things and he can consider by rule whether or not it should be an employment standard for use or non use of tobacco items.

President

On the amendment by Senator Johnson?

Senator Gordon?

Sen. Gordon

There is a question for Senator Johnson. Among Fire Marshall's qualifications is he required to be a physician or a doctor of public health that could measure these negative effects of smoking?

Sen. Johnson

State Fire Marshall, Senator, as you will know is created by Florida Statute - by this Body - and he is required to take into consideration every bit of information available to him to make

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this the safest state in the world, and that's what the law requires him to do, whether that is taking testimony of doctors or, you know, of technicians on lung capacity, and I'm certainly sure that's within the public hearing powers that he will undertake.

Sen. Gordon

Is there any question in your mind Senator, that anybody looking at the evidence will say any other than smoking tobacco is harmful to one's health and is a significant cause of a variety of diseases, so as long as we all know that, why do we have to create some more bureaucratic hearings for a Fire Marshall, why not just go as an old time advocate of simplicity in government, senators, this really, this amendment doesn't become you, I must say.

Sen. Johnson

Well, I'll wear it as a mantle of wherever it is today, but the fact of life is that I wish all the people in the world didn't smoke. You know I thank God my wife stopped smoking last year, but the fact of life is that this is an issue of the Constitution of Florida - we should not deprive somebody's employability in this Body by that standard, and that's what the issue is, so I urge you to adopt the amendment, let the Fire Marshall out there deal with this by rule -- it doesn't belong in the law.

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President

O.K, further debates? is ... he's closed on the amendments ...
would you like to ... Let's, let's now we are on the uh,
amendment by Senator Johnson, all those in favor of the
amendment say yeah.

Senators

Yeah.

President

Opposed, No.

Senators

No.

President

Well, it looks like it passed, o.k. Let's go on the board.
Unlock the machine and members will vote.

Have all members voted?

Clerk will unlock the machine and ask to vote.

25 yeahs and 10 nays.

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President

So the amendment passes. All right on the bill, any further amendments on the bill.

Clerk

No.

President

Any further discussions? Senator Malchon moves that the rules be waived; House Bill 1456 be taken up, read for the third time by title only and placed on final passage. Without objection read the Bill.

Clerk

House Bill 1456 to be entitled An Act Relating to Firefighters.

President

Clerk will unlock the machine and members proceed to vote.

Have all members voted? Have all members voted?

GAP

Clerk

Mr. President, I'm directed to inform the Senate, the House of Representative has refused to concur on Senate Amendment 1,

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to House Bill 1456 and requests the Senate to recede. House Bill 1456 the Bill entitled an Act Relating to Firefighters.

President

Senator Johnson? Senator Malchon?

Sen. Malchon

Mr. President, this is the Firefighters' Bill, it has been returned from the House without, with their refusing to accept the amendment that we put on it, I think we all understand the issue, I would just like to move that we recede from the amendment; the Bill as originally filed and supported by the Florida Fire Chiefs Association, the Professional Firefighters of Florida, Florida States Firemens Association, Society of Fire Instructors, Florida Firefighters Training and Standards and Advisory Council, the Florida Fire Marshalls Association and the Florida League of Cities.

President

Senator Johnson.

Sen. Johnson

Mr. President, Senators, this is the Smoking Bill and I would just add that we do not recede from the amendment. What you are saying is this, if you recede you're saying that no one can be hired as a firefighter unless they sign an affidavit that

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they haven't smoked for one year prior to employment. Now, if that's constitutional I'll eat my hat, but number two is, you know this legislature made a decision last year Senators, under the prescriptions that we will allow for the State of Florida that you will not pay for a prescription for someone that wants to stop smoking. If they go to a doctor and say they want to stop smoking and they get a prescription to stop smoking, you won't pay for it, but now they're trying to tell you in this Bill that smoking is bad for firefighters. Well, we know smoking is bad for everybody, but this Legislation decided last year not to pay for that, to try to encourage you not to smoke. But if you put a Bill on this floor that says, that County Managers and City Managers may not smoke for one year prior to employment, I'll vote for it. Let's start at the top, but you are picking on the little guy out there on the street, who is trying to get a job, to go to a program and will be subject to perjury, so in order to be charged with perjury they sign a false affidavit that they haven't smoked for one year. It is a bad position, is one that hurts the little people and I urge you not to recede from the amendment. This Senate is overwhelming in not receding from that amendment, and adopting my amendment, and I hope you stick with that position and let this bill die, that's what it deserves. It deserves what Senator Meek called black flag dead.

President

Senator Dudley.

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Sen. Dudley

Would Senator Malchon yield?

President

She yields.

Senator, would this, this is the bill in its original form, as I understand it that is coming back? Does it also provide that a firefighter would be subject to being fired, if, let's say that if they sign the appropriate affidavit under this Bill and it was true at the time, and they began smoking, have a cigarette off duty, outside of the fire station, would they then be subject to be fired?

Sen. Malchon

I would imagine they would be, Senator.

Sen. Dudley

And, have they made any changes with regard to the concerns I raised the other day about the drinking of alcohol, is that currently a qualification for employment if you sign an affidavit if you don't drink alcohol and you haven't for a year?

Sen. Malchon

No, there are some other established health tests for firefighters that does not include alcohol or drugs, but I would

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certainly, if you would want to introduce such a bill, I will certainly support it. We are dealing only with the smoking here.

background voice

We just got a yell loud.

President

Any further discussion of the motion? Senator Langley then Senator Girardeau.

Sen. Langley

Mr. President, I was trying to work out a compromise here and my problem was that Senator Malchon, is as it reads still, you are talking about chewing tobacco, you are talking about snuff, you are talking about any sort of .. uh, I read to you the other day the definition of tobacco products, I was consulting with our Clerk Mr. Brown, he says we can't amend at this time, so I think that really , you know there is a nexus, as we call it in the law, between the smoking, possible lung damage and then working as a firefighter with inhalation of smoke, and that I think would have stand, would uphold any constitutionality that Mr. Johnson worries about, but I don't think you can argue that on chewing tobacco or snuff or these other ingested tobacco products, so I think we got a real problem with the bill, I don't think if we passed it, that we will have done any good.

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President

Senator Malchon.

Sen. Malchon

Yes, Senator Langley, you are aware of course that the definition that you read the other day, is from the section on Tobacco Product Taxes, and specifically says that that definition relates to that section, I have been advised that there are other precedents for this language in here. I did pursue the possibility of offering a clarifying amendment, but I also was told that we can not do that, but the people who prepared this language are satisfied that it does not really relate to that other definition as you.. uh, which specifically confines it to that section of the Statutes.

President

Senator Don Childers and Senator Girardeau.

Sen. Don Childers

Senator Malchon will yield for questioning?

Sen. Childers

Is it your understanding on that the firemen support your proposal?

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Sen. Malchon

Not only the firemen, but all of the fire people's associations and including the League of Cities because of the cost savings that will be involved.

Sen. Childers

Mr. President, Senators, I would urge that we support Senator Malchon, and her proposal on this, I don't understand why we would be going against what the fireman want and the Fire Chiefs of the State of Florida, and we will urge we support Senator Malchon.

President

Senator Girardeau.

Sen. Girardeau

Thank you, Mr. President, Senator Malchon knows that this is a rather touchy area with you, I don't really want to get up and forcefully object to her basic bill, but this part of the bill I do, inasmuch as we are talking about smoking is being a major threatening feature in the life of a fireman. Smoking is something that we are only recently relating to cancer, and that is not totally proven as being a factual link in all instances, but more than that we are saying now that a person who has smoked, and if you are talking about the majority of our population - up to a few years ago, most of the senators smoked,

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most of the representatives smoked or at least a great many. And now you are going to suddenly put in place something that says not only must they not smoke, but they must not have smoked in so many years. If I'm a youngster going into firefighting, which would be probably between the ages of 18 and 24, which I will be beginning. Suppose I'm just starting out of life at that age, and I have started smoking, I only smoked for only six/eight months, let me tell you what happens. When you smoked for six months, or a year, two years, five years, ten years, the thing that Senator Malchon is talking about happens is that the lungs become more congested and adhesions occur, and as a result, they're not able to breathe or, not have the volume abilities of a non-smoker, but at that age when a person has not really engaged in smoking over prolonged periods of time, they are not in a life threatening hazard and it is easily reversed, and as a result I would urge you this is not a good amendment. I think we should vote against this amendment, because as you look around, you know just as this body and the body of the other end of the hall has began not to smoke, but over a prolonged period of time, that I think that this will happen, but let's not force this on youngsters right now, who will not be able to get a job simply because they have smoked within the passed six or eight months.

I'm sorry, I want you not to recede and retain this as it says.

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President

Senator Woodson-Howard and then Senator Meek.

Sen. Woodson-Howard

Thank you Mr. President, I would like to address a question to the Sponsor again, so that I understand, because I understand what she is trying to do, why she is trying to do it, but I fail to understand why since local governments can already do this, and it is being done at certain places around the State, why do we need to put in Statute?

Sen. Malchon

I think that all of the fire people, police, Fire Chiefs, everybody around the State, wants to make this a uniform state policy, that's what they are trying to do.

Sen. Woodson-Howard

Thank you.

President

Senator Meek

Sen. Meek

Mr. President, Senator Malchon and I, we have talked about this and I always hate to go against anything that Senator Malchon brings up because it usually has a good public purpose but I

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must ask the senate to uh, not to recede, to recede to vote against this motion by Senator Malchon. I worry about anything that puts an impediment in the way of people getting a job. As well meaning as this particular issue is, I think it's just another impediment. I think its hard enough for blacks and other minorities to get in the fire department as it is, and I think that by giving this one other impediment or blockage just creates something that Senator Malchon would not want to do; she wants to be sure that there is good respiratory health but she has never shown that she wants to put any impediment in the way of people who want to get a job in the fire department. And I say to you that if this happens that would be just another impediment regardless of how well intended it is.

President

Senator Beard

Sen. Beard

Mr. President, Senator Malchon and I are not talking to the same people. We had representatives of the fire people visit us as late as this morning and they are not saying the same thing that you are telling us. They think this amendment is unconstitutional and they don't want it - for that reason if no other.

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President

Anyone else to speak for or against the motion that the Senate recede from the amendment. Is that the motion, Senator?

O.K. Get ready. Here we go.

Sen. Malchon

May I close briefly?

Senator Malchon has moved that the Senate -- the House refused to concur in the amendment, in the Senate amendment to House Bill 1456. Senator Malchon moves that the Senate, as requested by the House, recede from the amendment. Now Senator Malchon may close on her motion.

Sen. Malchon

Very briefly, Mr. President, members of the Senate. I don't know who visited you this morning, Senator Beard, but the official groups have all supported it. They have prepared the list for me and we can go back and forth on that, they are all officially supportive. There have been court cases on other such statutes and it has been ruled constitutional because there is a direct correlation. To answer the question of preventing people from getting jobs - certainly no one intends or wishes to do that. The choice of smoking is optional. If such a law were in effect people would know that if they were planning to go into that career that they would have to stop smoking at a

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reasonable time. Senator Girardeau pointed out a very important fact, and that is why the year preceding it is necessary. Even when there has been lung damage, which can occur even after very few years of smoking, if it is not over a lifetime, it can be - it can repair itself so that in that period of one year that can be repaired so that these people when they are on the job are not going to be a risk to themselves or to their fellow firefighters, I urge you to vote to recede from the amendment.

President

Senator McPherson.

Sen. McPherson

Mr. President, I just had a question. This is that time of year when you are on and off the floor and you can't keep fully aware of what's happening. If you are voting with Sen. Malchon, you vote yes, if you are voting against you would vote no is that correct?

President

Yes. Anyone else, Senator Girardeau.

Sen. Girardeau

Mr. President, I realize she was closing but she made a point and I need to ask a question concerning, would you yield?

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A person who has stopped smoking for five, ten years and smokes an occasional cigarette and happened to have smoked within the past year occasionally, maybe at a party or something, and they filled out that affidavit and say they don't smoke and haven't smoked in the past year. That person by your amendment would be precluded from taking a job on the fire department. That's wrong. That should not be. And if they fill out that affidavit someone is going to say I saw you at a party smoking and therefore you have lied and therefore you are guilty of false information. I urge not to support this but in other words, do not recede.

Sen. Malchon

Is that a question Senator Girardeau?

Sen. Girardeau

Yes, is that the question, yes. Would you agree that that is true that they would be precluded from applying and filling out an affidavit that they don't smoke anymore?

President

Senator Malchon moves that the Senate recede from the amendment. Those in favor let it be known by saying yeah. Yeah. (in chorus). Opposed, Nay. Nay (in chorus).
Unlock the machine.
Lock the machine and call the vote.

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Clerk

20 Yeahs, 12 Nays.

So the Senate recedes from the amendment.

Now . . . let's vote on the bill.

Lock the machine and announce the vote.

Clerk

25 Yeahs, 7 Nays.

President

So the Bill passes.

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