

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Twelfth

Legislature

OF THE

STATE OF MAINE

VOLUME II

SECOND REGULAR SESSION

April 3 - April 16, 1986

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STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Wednesday
April 9, 1986

Senate called to Order by the President.

Prayer by Reverend Brian Reberts of the New Hope Baptist Church in Farmington.

REVEREND REBERTS: Shall we pray. Precious Heavenly Father, we thank You for this great land of America and the freedoms that we have here. Father we thank You for Your son who shed His blood on the cross that we might have freedom from sin. Lord, here again today, bless these lawmakers we pray. I pray that their decisions may be in congruence with Your word, that You might continue to give us the freedoms in this great land that we have enjoyed thus far. Bless them today we pray, in Jesus' name. Amen.

Reading of the Journal of Yesterday.

Off Record Remarks

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

ENACTORS

The Committee on Engrossed Bills reported as truly and strictly engrossed the following:

Emergency

An Act to Remove Maximum Annual Limits on the Captured Assessed Values within Tax Increment Financing Districts

H.P. 1622 L.D. 2285
(H "A" H-637)

This being an Emergency Measure and having received the affirmative vote of 25 Members of the Senate, with No Senators having voted in negative, and 25 being more than two-thirds of the entire elected Membership of the Senate, was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Under suspension of the Rules, ordered sent forthwith.

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act Relating to Boards and Commissions"
H.P. 1614 L.D. 2269
(S "A" S-446; S "B" S-448)

In House, March 27, 1986, PASSED TO BE ENGROSSED.

In Senate, March 31, 1986, PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENTS "A" (S-446) AND "B" (S-448) in NON-CONCURRENCE.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENTS "A" (S-446) AND "B" (S-448) AND HOUSE AMENDMENT "A" (H-657) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Bill "An Act Providing for the Lease of Unused Space or Facilities Owned by the State"
S.P. 917 L.D. 2291
(H "A" H-636; H "B" H-645)

In Senate, April 7, 1986, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENTS "A" (H-636) AND "B" (H-645), in concurrence.

March 31, 1986

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-645) AS AMENDED BY HOUSE AMENDMENT "A" (H-661) thereto AND HOUSE AMENDMENT "A" (H-636) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

The Honorable Charles P. Pray
President, Maine Senate
State House
Augusta, Maine 04333

Dear Senator Pray:

The Commission is required to report annually to the Governor and the Legislature. It is my pleasure to transmit the enclosed copy of our Annual Report for 1985 to you.

During 1985, the Commission completed the task of establishing a gross patient service revenue limit for each of Maine's forty four hospitals. As we forecast a year ago, and the data presented in this Report now indicate, the early results of our work have been most promising. Hospitals' charges have been reduced. The increase in the income they derive from their patient care services has been slowed to approximately five percent per year. At the same time, our hospitals have been afforded a degree of protection that has become increasingly important in light of the arbitrary and severe reductions in the Federal Government's payments for the services they provide to Medicare beneficiaries.

As indicated in the final sections of the Report, we have now adopted rules defining those practices of payers that result in savings to hospitals or other payers and, thus, are to be matched by "differentials" or discounts. These rules are necessary to assure that all payers contribute fairly to hospitals' support. They are also important to our efforts to stimulate productive competition within our health care system.

Copies of this Annual Report have also been forwarded to a number of your colleagues including the members of the Joint Standing Committee on Human Resources. We would welcome an opportunity to meet with you to discuss any questions you may have regarding either its content or our work.

Sincerely,
S/David Wihry
Chairman

Which was READ and with Accompanying Papers ORDERED PLACED ON FILE.

Non-concurrent Matter

Bill "An Act Establishing a Commission to Implement Computerization of Criminal History Record Information" (Emergency)

H.P. 1627 L.D. 2295
(S "A" S-454)

In Senate, April 3, 1986, PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-454).

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-454) AND HOUSE AMENDMENT "B" (H-660) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Bill "An Act to Require Motorcycle Driver Education for First-time Operators of Motorcycles"

H.P. 1643 L.D. 2316

In Senate, April 7, 1986, PASSED TO BE ENGROSSED, in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-659) in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

COMMUNICATIONS

The Following Communication:

HEALTH CARE FINANCE COMMISSION
STATE HOUSE STATION 102
AUGUSTA, MAINE 04333

The Following Communication:

STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA, MAINE 04333

April 8, 1986

Honorable Joy J. O'Brien
Secretary of the Senate
112th Legislature
Augusta, Maine 04333

Dear Madam Secretary:

The Speaker appointed the following conferees to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act to Revise the Energy Building Standards Act" (H.P. 1385) (L.D. 1954):

Representative JACQUES of Waterville
Representative RIDLEY of Shapleigh
Representative DEXTER of Kingfield

Sincerely,

S/Edwin H. Pert
Clerk of the House

Which was READ and ORDERED PLACED ON FILE.

COMMITTEE REPORTS

House

Ought Not to Pass

The following Ought Not to Pass Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

Bill "An Act to Establish a Sales Tax Exemption for Sales to Incorporated Nonprofit Homes for the Elderly"

H.P. 1463 L.D. 2060

Ought to Pass

The Committee on ENERGY AND NATURAL RESOURCES on Resolve, Authorizing the Sale of Certain Public Reserved Lands in Winterville Plantation

H.P. 1626 L.D. 2294

Reported that the same Ought to Pass.

Comes from the House with the Report READ and ACCEPTED and the Resolve PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Resolve READ ONCE.

The Resolve TOMORROW ASSIGNED FOR SECOND READING.

The Committee on UTILITIES on Bill "An Act Extending the Boundaries of the Gray Water District to Include the Entire Town"

H.P. 1664 L.D. 2342

Reported that the same Ought to Pass.

Comes from the House with the Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Bill READ ONCE.

The Bill TOMORROW ASSIGNED FOR SECOND READING.

Ought to Pass in New Draft

The Committee on BUSINESS AND COMMERCE on Bill "An Act to Amend the Law Giving Protection to Shareholders in Maine Corporations"

H.P. 1529 L.D. 2164

Reported that the same Ought to Pass in New Draft under same title.

H.P. 1669 L.D. 2353

Comes from the House, with the Report READ and ACCEPTED and the Bill in NEW DRAFT PASSED TO BE ENGROSSED.

Which Report was READ and ACCEPTED, in concurrence.

The Bill in NEW DRAFT READ ONCE.

The Bill in NEW DRAFT TOMORROW ASSIGNED FOR SECOND READING.

SECOND READERS

The Committee on Bills in the Second Reading reported the following:

House

Bill "An Act to Exempt the Town of Hope from Liability for Certain Tax-acquired Property" (Emergency)

H.P. 1479 L.D. 2081

Which was READ A SECOND TIME.

On motion by Senator CHALMERS of Knox the Bill and Accompanying Papers INDEFINITELY POSTPONED in NON-CONCURRENCE.

Sent down for concurrence.

House As Amended

Bill "An Act to Amend Watercraft Excise Tax Laws"
H.P. 1431 L.D. 2022
(C "A" H-649)

Bill "An Act to Provide Funds for the Teacher of the Year Program"

H.P. 1517 L.D. 2146
(C "A" H-646)

Bill "An Act to Amend the Annual Operating-under-the-influence Report and to Establish a State-operated Evaluation Program within the Driver Education Program of the Department of Human Services"

H.P. 1571 L.D. 2221
(C "A" H-651)

Bill "An Act to Provide Appropriate Penalties for Violations of Milk Commission Statutes and to Provide for Administrative Enforcement"

H.P. 1585 L.D. 2232
(C "A" H-648)

Which were READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended, in concurrence.

Senate

Bill "An Act to Improve the Marketing of Milk in Maine"

S.P. 939 L.D. 2352

Which was READ A SECOND TIME.

Senator HICHENS of York moved the INDEFINITE POSTPONEMENT of the Bill and Accompanying Papers.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Erwin.

Senator ERWIN: Mr. President, Ladies and Gentlemen of the Senate. Last evening there was an extended debate, you also have some material that may still be on your desks that was passed out then. I would like to read you part of that material that was passed out.

"Regulations under the present minimum price system," this concerns the wholesale price paid to dealers. "The minimum price, under the present system, set by the Maine Milk Commission reflects state-wide averages in prices, costs, and delivery costs." Under L.D. 2352, no minimum wholesale price is set. "Dealers prohibited from selling below their costs, as a below cost guideline and the Maine Milk Commission costs, by these prices which reflects the costs of Maine's most efficient dealer." As I pointed out to you last evening, over the years the one item that so many people have objected to has been the theoretical model in which the figures are plugged into to set the price of milk. This is done away with, it will now be based on the cost base prices of the most sufficient dealer. There are some dealers that object to this violently. Why? Perhaps we should ask them or the gentlemen that seems to be representing one that objects the most. Would the price of milk in Cumberland County, under this Bill as the adjustments are made, decrease or stay the way they are? I am told that there is a very good possibility that they will decrease. If the dealer is really looking after the interests of the people in the State of Maine, why would he object to this? Is it because he wants to keep his profit up at a good margin? Or is he afraid that his profit might be cut down in a heavy populated area? One of the things that probably you had pointed out to you is the Farm Bureau is against this Bill. As I tried to point out to you last evening, it was not the farmers that voted against the Bill. It was their Executive Committee. It was not the draft that you have before you that we are trying to get passed that they voted against. It was the original draft of the Bill, which still contains the theoretical model in it. It is not in this draft now. I would ask you to vote against the Senator from York, Senator Hichen's motion and go on and pass the Bill. Thank you.

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

Senator HICHENS: Mr. President, last night when I asked the question as to how many of the Committee Members had seen the redraft, the response was that you don't let the opposition know, or see, papers that you have. That bothered me, I don't know that the good Senator meant it just the way he responded to me, but in all of my years in the State Legislature, I have never been on a Committee when a redraft had been brought out that the Committee and didn't have an opportunity to discuss that redraft before the final report came out.

As the good Senator stated this morning, the Farm Bureau voted on the original draft and never saw the redraft. I think that is very unfair to groups who have their statements recorded in the Senate Record who have never seen what they were actually quoted as to responding to. I think with those things in mind, we are very logical today if we vote to Indefinitely Postpone this Bill and, perhaps, in another session it may be brought forth again, but under the circumstances, I think we should vote to Indefinitely Postpone.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Erwin.

Senator ERWIN: Mr. President, Ladies and Gentlemen of the Senate. When a Bill is published and distributed, that is what an organization usually gets. In this case this is what the Executive Committee of the Farm Bureau voted on. Perhaps it may be unusual, but I hardly think so, that when one part of the Committee does not go along with another part of the Committee, is there any rules and regulations that say that the people that sign the jacket can't change their mind? Can't decide what will be within that jacket? Do they have to go back and have a new hearing? And at this late date have to rehash it over and over again in the Committee knowing full well what the vote is going to be? Is that what the good Senator from York is trying to say? I don't think that is what is expected of us, and as I pointed out I did something that I think some people would not have done. When we did get a new draft made to go in our jacket, I immediately asked the Committee Clerk to make thirteen copies and to give a copy of each Member of the Agriculture Committee. Giving them a chance, ahead of time, before it normally would be available to analyze it, to see whether they wanted to change their mind or not, but it also gave them something else, it gave them a leg up on preparing extra ammunition to try to defeat the Bill. As to the question that was raised last evening and may have been, in some peoples mind, why did certain people vote certain ways? I think perhaps some of you will recall, last year in January and February during our problems with the milk industry, there were some questions raised about the conflict of interest of some of the Members of the Agriculture Committee. I stood here and defended my Committee, because I think each and every one of us has the right to form their own opinions, to express their own opinions, as long as they don't get bottle lined into defending someone else. I still maintain that. I still think that no matter what their business is, no matter what their connections are, they have the right to form their own opinions, to express them to you and try to convince you to go along with them. There are others that have a different idea of what conflict of interest means. Thank you.

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

Senator CLARK: Thank you Mr. President, Men and Women of the Senate. Fourteen years of public service does not, this morning, find solace in the allocations directed at the Committee on Agriculture and particularly the signers of one of the reports of L.D. 2352. If here, in this Maine Senate, we are attempting to defeat a measure, which was been appropriately referred, held at public hearing and followed by countless work sessions, on the basis of irregularity of process within that Committee, then we, as Members of this prestigious Body, have hit a new low. To suggest or even allege irregularities within this Legislative process is not a point on which we support or defeat a measure which is before us this morning.

To impugn the integrity of the Senate Chair of the Joint Standing Committee on Agriculture, whose integrity has never been questioned and who has responded candidly, honestly and openly, as a basis of defeating L.D. 2352 is an affront, not only to me, but I hope to other Members of this Chamber, as well as the signers of the Committee Report, that the Chair of that Committee is defending here this morning. I would ask all of us to raise our sights and to debate the rise and fall of this measure on the merits of the Bill, for indeed, it is the merits of the Bill on which we should be focusing this morning. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. Some of you may remember the Committee Report last night, and one of the Senators on the Agriculture Committee was on the opposite side from the Senator from Oxford, Senator Erwin and the Senator from York, Senator Black. I was there from day one, I am not rising this morning to debate the merits of the Bill, I am simply telling you that this Senator on the opposite side from the Senator from York and the Senator from Oxford, was kept fully abreast of what was going on. The redraft after the Committee has heard the Bill, it is very typical it happens in my Committee all the time, there was no attempt, as near as I can determine, to deceive anybody. I think the other Members on the same side as myself, were kept fully informed of exactly what was going on. I really want to echo the words of the Senator from Cumberland, Senator Clark, that we ought to be debating this Bill on its merit. There was nothing that went on in that Committee, that I am aware of, that was in any way questionable as to the integrity of the Committee or any individual Committee Member. I really wish that the Senate could get on with the business of debating the Bill on its merits and not be attempting to promote one position or the other, by trying to call into question the integrity of any Member of that Committee. I am just standing here to assure you this morning that, that is not an issue here regarding this Bill. Thank you.

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

Senator HICHENS: Mr. President and Members of the Senate. I certainly did not intend to impugn upon the integrity of the Chairman or the Members of that Committee. I stated last night that five Members of that Committee are dairy farmers, are fully aware of the impact of this Bill and they voted against passage of the Bill. I was informed that they had not had a chance to discuss that redraft, which I think was a logical situation to bring up to do today. I do not want to vote in on any charges of unethical procedures, I want to vote on the merits of the Bill and that alone. I would ask for a Roll Call Mr. President.

On motion by Senator HICHENS of York supported by a Division of at least one-fifth of the Members present and voting, a Roll Call was ordered.

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

Senator BLACK: Thank you Mr. President and fellow Senators. I held a rebuttal from one of our good Senators last night and repeated, and I can no longer stand here and accept that. Five people milking cows on our Committee signed a Bill on the majority side. There are not five people on that Committee milking cows, including me. There are only three. That is all I am going to say. Now I am going to talk about the milk business. As you know I am a director of AGRIMA, and I sit on some very important discussions that affect the northeast. One of those discussions a few months ago, centered on the prospects for the future and what was going to happen. I will admit that people who are quite studious dream a little, but they do know the technologies involved in the milk business. There is the prediction, if the science that is being examined comes forth, that there will only be six processing plants in the Country. We are on the verge of our milk being put on the shelf and probably sitting there six months and all you do when you open it is refrigerate it. You think about that. Technology can go to the moon and the other things that go along with food processing is not that far away. My concern is for the long term good of the dairy industry in this State. I am going to state it without a lot of fanfare and time involved. There is extra processing capacity with today's technology and today's technology is far more modern than it was five years ago. South of us there are plants in the Boston area that can supply the supermarkets cheaper than in Maine. Whether they choose to do this or not, I do not know, but they are thinking about it. This Bill is an answer to the facts found out by the study Committee we had here last year, by some very experienced men in the milk business. You can read anything you want from it and people disagree with that report with some degree, but they were going to disagree with it regardless of what they came up with. This Committee and the Agriculture Committee hearing and the Legislature is going to disagree with what ever you come up with, some members of it. I am not going to go into that detail, I am just saying that technology, the possibility and the offers from south of us are there.

The way our present statute is, that we go under, the Commission cannot adapt to these changes that rapidly. If one of the chain stores decides to go south, they're are all going to go, because they are going to have to. There is that danger. As to the probability of it, I cannot state, because it is not within my realm of knowledge. You have been told and if this Body defeats this, it probably will go to the House and be defeated anyway, but the responsibility of not answering a problem which you have been told about, won't be on your shoulders.

I fear that they are going to go out of state, and it is my opinion that they probably will, but I can't state it definitely. I think it is time that you thought about the long term interest of the dairy business. The pricing is decided nationally, there are problems that are going to have to be answered federally. They seem reluctant to do this. I think you have listened to me talk long enough. I have a lot of figures which I could refer to, costs and spreads and milk pricing, but I am not going to do it. I think you for your patience and I thank you Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion of Senator HICHENS of York to INDEFINITELY POSTPONE the Bill and Accompanying Papers.

A vote of Yes will be in favor of Indefinite Postponement.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

Senator USHER of Cumberland who would have voted Yea requested and received permission to pair his vote with Senator KANY of Kennebec who would have voted Nay.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators, BALDACCI, BERUBE, BUSTIN, CARPENTER, CHALMERS, HICHENS, MATTHEWS, MCBREAIRTY, PEARSON, PERKINS, SEWALL, SHUTE, TRAFTON, TUTTLE, TWITCHELL, WEBSTER, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators, ANDREWS, BLACK, BROWN, CLARK, DOW, EMERSON, ERWIN, GAUVREAU, GILL, KERRY, MAYBURY, NAJARIAN, STOVER, VIOLETTE

ABSENT: Senator DIAMOND

EXCUSED: Senator DUTREMBLE

Senator BALDACCI of Penobscot requested and received permission to change his vote from Nay to Yea.

17 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator HICHENS of York to INDEFINITELY POSTPONE the Bill and Accompanying Papers, PREVAILS.

Sent down for concurrence.

(See Action Later Today)

ENACTORS

The Committee on Engrossed Bills reported as truly and strictly engrossed the following:

An Act to Improve Lobster Research and Management
H.P. 1597 L.D. 2248
(H "A" H-606; H "B"
H-616; H "C" H-641)

An Act Concerning Atlantic Salmon
H.P. 1621 L.D. 2284
(H "A" H-642)

An Act to Authorize Preferred Provider Arrangements in Maine and to Establish a Cash Reserve Requirement for Health Maintenance Organizations
H.P. 1625 L.D. 2290
(H "B" H-644)

An Act Relating to Driver Education for the Handicapped and Already Licensed Individuals
H.P. 1645 L.D. 2319

Which were PASSED TO BE ENACTED and having been signed by the President, were presented by the Secretary to the Governor for his approval.

An Act to Reimburse the Department of Inland Fisheries and Wildlife for Search and Rescue Operations

H.P. 1507 L.D. 2121

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

An Act to Reorganize the Maine Potato Industry
S.P. 876 L.D. 2205
(S "A" S-450)

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate. I am not going to take a great deal of your time this morning, I am not attempting to kill this Bill, I simply want to make some comments. One of the major concerns in the potato industry over the last few years among people in the Legislature especially, has been that there have been too many organizations supposedly representing the potato industry. A couple of years ago, I was able to get an amendment on a Bill which increased the potato tax, it doubled the potato tax, which said that they had to either reorganize in a way acceptable to the Legislature by this year, or lose substantial amounts of tax revenue. With that kind of club over their head they did get together and they did reorganize and this is the Bill that is embodied in L.D. 2205, which appears as item (7-2) on your calendar. It is not a perfect Bill, in fact, I would argue that it was far from perfect. One of the problems with the potato industry over the last few years is that it has tended to be dominated by certain cliques of people to the detriment, in my opinion, of the average farmer. I think there is still room within this new structure of that to continue to happen and that distresses me a great deal. I had to agonize a great deal before I could even sign this Bill out of Committee, but I did and I am just simply standing here today to tell you that this is, I hope, and honest attempt, by the forces within the potato industry to reorganize under one umbrella organization so now henceforth for those of you who return in the next session of the Legislature, you hopefully will only see one organization coming forth to speak for the industry. The kind of mischief that has gone on in the past, and kept the farmers divided, and believe me there have been people that have made careers out of keeping farmers at each others throats up there, so that kind of mischief will hopefully go away. There is still potential for that under this umbrella organization, but it is better than what we had before and therefore I am supporting it's enactment. I hope that you would all do so. Thank you.

Which was PASSED TO BE ENACTED and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Authorize the Treasurer of State to Temporarily Invest Excess Money Including Unspent Bond Proceeds in Tax-exempt Obligations
S.P. 862 L.D. 2176
(H "A" H-639)

On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

Under suspension of the Rules, the Senate considered the following inclusively:

Emergency

An Act to Establish the Cost of the 1986 Spruce Budworm Suppression Project and to Provide Operating Funds for the Spruce Budworm Management Program
H.P. 1591 L.D. 2244

Emergency

An Act Relating to Use of Sulfite as a Food Preservative
S.P. 908 L.D. 2275
(H "A" H-640; S "A" S-449)

Emergency

An Act to Require the Workers' Compensation Commission to Study the Causes of Delay and its Effects on the Participants in the Workers' Compensation System
H.P. 1636 L.D. 2309

Emergency

An Act to Require Emergency Vehicles to Stop and Proceed with Caution when Overtaking and Passing School Buses
H.P. 1644 L.D. 2318

These being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, were PASSED TO BE ENACTED and having been signed by the President, were presented by the Secretary to the Governor for his approval.

Senator HICHENS of York moved that the Senate RECONSIDERED its action whereby it INDEFINITELY POSTPONED:

Bill "An Act to Improve the Marketing of Milk in Maine"
S.P. 939 L.D. 2352

(In Senate, April 9, 1986, READ A SECOND TIME. Subsequently, Bill and Accompanying Papers INDEFINITELY POSTPONED.)

On motion by Senator BALDACCI of Penobscot, Tabled until Later in Today's Session, pending the motion of Senator HICHENS of York to RECONSIDER INDEFINITE POSTPONEMENT.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and specially assigned matter:

Bill "An Act to Improve Child Welfare Services in Maine"
H.P. 1588 L.D. 2233

Tabled - April 8, 1986, by Senator VIOLETTE of Aroostook.

Pending - the READING of Committee Amendment "A" (H-653)

(In Senate, April 8, 1986, the OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-653) Report READ and ACCEPTED. The Bill READ ONCE.)

(In House, April 8, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-653).)

Committee Amendment "A" (H-653) READ and ADOPTED, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President, Men and Women of the Senate. I am not going to oppose the enactment of this legislative measure, but I did feel obligated to briefly express, on the Record, my concerns regarding one aspect of L.D. 2233. This is an Omnibus Bill which is the product of substantial work by the Joint Standing Committee on Audit and Program Review, regarding the troublesome issue of child abuse in this State of Maine and how the Department of Human Services can more appropriately marshal its limited resources to addressing that very troublesome problem. I must say that I have a great respect for the entire Membership of that Committee and the work which they have invested over the last year in this subject area.

I also feel that on balance, L.D. 2233 is a major step forward, in terms of allowing the State to address responsibly the area of child abuse and to ascertain and guarantee that children's best interests are observed in the child abuse projection system. I do have some reservations regarding one aspect of the Bill.

Under current law, the Department of Human Services is under a statutory mandate to in all cases perform reunification and rehabilitation services, in other words, if a child has been abused and placed into foster care, the Department has an obligation to thoroughly assess the liability of rehabilitation and to work toward that goal. To bring the victim, the child, back in with the parents at the earliest, practical date. It has become apparent to many of us that, although it is an honorable goal there are some limited cases where reunification is simply not practical and, in fact, is directly contrary to the best interest of the child. The Committee has appropriately resolved this issue by allowing, in some what narrow circumstances, the Department to deny reunification efforts. I have no problem with that, in fact I had a competing measure, which the Committee rejected, which would have done the same thing. My problem is with the approach the Committee has adopted. On page six of the Bill, section fourteen, there is language in L.D. 2233, which provides that if a parent is convicted in a court of law of any one of a series of criminal offenses, involving the victim, that automatically divests the Department of Human Services of its obligation to perform reunification efforts. These offenses, in fact, are very serious. Gross sexual misconduct, manslaughter, sexual abuse of minors, incest all of these offenses any reasonable person would recognize would cause one grave concern as to whether a child should ever be put back home with the offending parent, no question about that at all. In fact, courts regularly do give that serious consideration and would be most reluctant to return a child into a home where an offender resides, unless there were satisfactory assurances that the problems have been resolved.

My problem is that this Bill sets up an absolute rule, that the Department is automatically, in all cases, relieved of reunification responsibilities. It strikes me as though we ought not to be engaging in that kind of legislative measure. We ought to provide clear guidance and I have no problem with the parent having a responsibility to demonstrate that the problems occasioned by the criminal act have been addressed. It is my judgment that the inclusion of this language will have an unintended consequence, which actually will be contrary to many children's interest. Although on many issues, I really have to use my best judgment, rather than my personal experience, in this particular area I have been engaged for the last ten years in several cases representing not only parents, but also children and the guardianship in child abuse cases. My concern is as follows; if we allow the Department to shut off reunification efforts, if a parent has been convicted of a certain offense, that parent will almost definitely feel obligated to try his or her case in a court of law, and by doing that we are going to require the victim, child, to appear in court and present testimony to support the State's case. We all recognize the traumatize impact that has.

As a practical effect, under current practice, we don't do that quite often, we reach agreements where a parent who has been convicted of a certain offense will have to satisfy the Department that the objectives of a case plan or reunification plan have been addressed and have been met, before any return home will be offered by the Department. Under this practice, parents certainly recognize the responsibility they have, the burden is on them, to demonstrate that the problems which have rise to the abuse are being addressed. Under the language in the Statute, this situation changes and it seems to me that we ought not to do that. I have some real grave concerns regarding this matter. I know the Committee was very aware of the problems. This issue was debated at length in the Committee and a three year sunset has been placed on this provision of the Bill. I respect the Committee's intent, I understand they want to take a look at this and if there are adverse consequences, they will address those. My concern is that I feel that, although I respect the Committee's intent in this area, by taking this particular approach we may well force children, victims, into court and that is contrary to the intent of this legislation. I do have some major misgivings. I am not seeking to oppose this Bill or to kill this Bill today, but I do want this Body to be aware of my concerns so that if, in fact, the consequences do occur, I would be the first to come to this Body and propose legislative changes. I am not opposing the measure today and I want to thank the Committee for the work in which they have done. There is a lot that is very good in this measure. The Committee has introduced notions to expedite permanency for children, the Committee has also required that parents as well as children have to work actively in reunification plans, that is excellent and I applaud their efforts, and I am only expressing my concern, as far as one specific portion of the Bill. With that, I thank you for hearing me out this morning and hopefully the concerns that I have will not come about. Thank you.

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

Senator MAYBURY: Thank you Mr. President and Members of the Senate. I didn't realize that we were going to have to have a small discussion of this Bill today, however, I do think the comments from the good Senator from Androscoggin, Senator Gauvreau, do need to be responded to. As all of you know, the Audit and Program Review Committee has had a long record of very thorough examination of the different areas that they are looking into and they are assigned to look into each year. With the new people who were added to the Committee, this last time, we felt that it was important that we live up to those high standards as well. We did, indeed, delve into this issue of child abuse and child welfare laws very seriously. As many of you know, I have been interested in this area for a long time, so I was especially pleased to be on the sub-committee. In direct response to the questions on this reunification that the good Senator has brought up, if you would refer to page five of L.D. 2233, section 6A, after a court hearing, there are a variety of options that are available, and one of them is to continue reunification efforts for a specific period of time for six months.

By doing this, it is going to encourage the parents to work very hard, it is also going to help the Department because they won't have to care for these youngsters for months and months and years. Disrupting their lives and causing an unneeded trauma to those individuals. I think that it is very important that the time limit is there and it helps everyone work to a speedy end. Also on page six of the Bill, section 14, sub-section 2A, it says that, "the Department may either decide not to commence or to discontinue rehabilitation and reunification efforts with either parent, or the court may order that rehabilitation and reunification efforts need not commence or that Department has no further responsibilities for rehabilitation and reunification with either parent, when" (and it lists a great variety of reasons when.) The good Senator from Androscoggin did come before the Committee towards the end of our deliberations and raised his concerns. We discussed that and we felt that this proposed legislation should have a chance to work and obviously, if there are some areas that are not working, they can be corrected. We felt that this does not force termination of reunification, but it does encourage all the parties involved and the welfare of the child to do their very best. Thank you.

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

Senator MATTHEWS: Mr. President and Members of the Senate. I will be very brief. I just also want to, as a member of that sub-committee on child welfare services, echo the sentiments of the good Senator from Penobscot, Senator Maybury. That has been a long deliberation, the good Senator from Androscoggin, Senator Gauvreau, has participated in the debate and has shared some insight to the Committee and his concerns have been dealt with in the Committee. I just wanted the Senate to know that throughout the deliberations on this very trying topic of child abuse, we have had the best attorneys in the State of Maine present. The Attorney General's office, the Legal staff of the Department of Human Services and a lot of experts that have been in the field, both those in the front line dealing with protective cases, and those that have studied this problem for years. Something had to be done. The public outcry is enormous and all of us in the Senate know of that outcry and we share those concerns of the citizens of the State of Maine. We couldn't believe the status quo as is, we had to make some changes and I think those changes are going to be good ones. They are reflected in the Committee decision, it was unanimous and I think those changes will make this State safer for children, and that is the bottom line. Thank you,

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

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

Bill "An Act to Improve the Marketing of Milk in Maine"
S.P. 939 L.D. 2352

Tabled - April 9, 1986, by Senator BALDACCI of Penobscot.

Pending - Motion of Senator HICHENS of York to RECONSIDER INDEFINITE POSTPONEMENT.

(In Senate, April 9, 1986, READ A SECOND TIME. Subsequently, Bill and Accompanying Papers INDEFINITELY POSTPONED.)

On motion by Senator CLARK of Cumberland, Tabled 1 Legislative Day, pending the motion of Senator HICHENS of York to RECONSIDER INDEFINITE POSTPONEMENT.

On motion by Senator VIOLETTE of Aroostook, the Senate removed from the Unassigned Table the following:

Bill "An Act to Define Terms in the Manufactured Housing Zoning Law"
S.P. 738 L.D. 1891

Tabled - March 18, 1986, by Senator VIOLETTE of Aroostook.

Pending - ASSIGNMENT FOR SECOND READING

(In Senate, March 18, 1986, READ ONCE.)

The Bill TOMORROW ASSIGNED FOR SECOND READING.

On motion by Senator VIOLETTE of Aroostook, the Senate removed from the Unassigned Tabled the following:

Bill "An Act to Require Labeling of Coffees and Teas Decaffeinated with Methylene Chloride"
S.P. 911 L.D. 2278

Tabled - April 1, 1986, by Senator VIOLETTE of Aroostook.

Pending - PASSAGE TO BE ENGROSSED

(In Senate, March 31, 1986, READ A SECOND TIME.)

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President, Men and Women of the Senate. It is with some reluctance that I stand this morning and offer to make the motion to Postpone this legislative measure. This Bill was introduced by the good Senator from Hancock, Senator Perkins, and it was referred to the Human Resources Committee and it received an unanimous Ought to Pass Report. The Committee fully supported the intent of Senator Perkins in his measure, which was to require that methylene chloride, the additive of that chemical on decaffeinated teas and coffees be labeled on containers of such coffees and teas. The Committee received a substantially body of evidence, which lead the Committee to conclude that there might be some possible health problem with that additive. There have been numerous studies, which have been conducted as to whether or not methylene chloride when used in decaffeinated coffees and teas may be carcinogenic. The Committee felt that on a side of caution, that we ought to require the labeling of such products in the State of Maine. I would point out that when this matter was heard there were no opponents. There were only proponents, and one person who testified in the neutral category. No one offered any opposition whatsoever to this measure. However, after the Bill received its unanimous Committee Report and was reported out to the third floor, opposition did come forward. The Committee has since, on two occasions, discussed this measure with many industry representatives and it is our conclusion that under the Federal Constitution, under the Supremacy Clause of that Constitution, that the State of Maine is pre-empted from inserting any labeling requirement in regards to decaffeinated teas or coffees. In fact, there is a rule that has been promulgated by the Food and Drug Administration for which is scheduled to go into effect in August of this year. The FDA, they have taken a position that if there is any health danger associated with methylene chloride in coffee or tea products, it is a very slight nature to be what is referred to as trivial or slight, and at least in the view of the FDA, there is no legitimate concern that consumption of decaffeinated teas or coffees with that processing agent would in any way jeopardize the public health or safety.

I think that it is fair to say that others would take a different view and may feel that, in fact, that agent might have some carcinogenic qualities. Nevertheless, the Committee feels restrained because of the Federal Pre-emption Doctrine to have the Bill Postponed at this juncture. However, the Committee is going to follow up on this area, in the following means.

One, we are going to, later in the session, seek to memorialize the Congress to review this matter further to determine whether or not in fact the use of methylene chloride does have some carcinogenic qualities when used with decaffeinated teas and coffees at the processing agent.

Further, we are going to correspond with our Congressional Delegation and urge our good Senators in Congress to contact FDA and work on this area. Finally, the Committee is contacting the Department of Agriculture and DHA in Maine. We would like to study the State's capacity to address safety issues associated with chemical additives and determine what the permissible authority the State of Maine has as far as advising consumers of possible safety affects or dangerous consequences from consumption of products which, in the State's judgment at least, contain carcinogenic or unsafe food additives.

This is a very legitimate health issue and I think it really calls into question the appropriate role of the States in guarding public safety and protecting public health in the Federal system. To what extent do states have responsibilities? To what extent are our powers and authorities curbed under the Federal Pre-emption Clause? We hope to have more answers to these issues next year and perhaps introduce legislation, but I would be remiss if I didn't congratulate the Senator from Hancock, Senator Perkins, in bringing this matter to the Committee's attention and it truly is with reluctance that I make this motion to Postpone the measure at this time. Thank you.

On motion by Senator GAUVREAU of Androscoggin the Bill and Accompanying Papers INDEFINITELY POSTPONED.

Sent down for concurrence.

On motion by Senator PEARSON of Penobscot, the Senate removed from the SPECIAL APPROPRIATIONS TABLE the following:

An Act to Provide Funds to Continue a Study of Bedrock Ground Water in Aroostook County
H.P. 1340 L.D. 1877
(C "A" H-511)

Tabled - February 28, 1986, by Senator PEARSON of Penobscot.

Pending - ENACTMENT

(In House, February 27, 1986, PASSED TO BE ENACTED.)

(In Senate, February 25, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-511), in concurrence.)

On further motion by same Senator, Bill and
Accompanying Papers INDEFINITELY POSTPONED in
NON-CONCURRENCE.

Sent down for concurrence.

On motion by Senator CLARK of Cumberland
ADJOURNED until Thursday, April 10, 1986, at 8:30
in the morning.