

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume II

May 26, 1977 to July 25, 1977

Index

**Senate Confirmation Session
September 16, 1977**

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Extend Collective Bargaining Rights to County Employees. (H. P. 1278) (L. D. 1509)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-602)

Comes from the House the Bill Passed to be Engrossed as amended by Committee Amendment "A".

Which Report was Read and Accepted, in concurrence

The Bill Read Once.

Committee Amendment "A" Read and Adopted, and the Bill, as amended, Tomorrow Assigned for Second Reading.

Ought to Pass in New Draft

The Committee on Judiciary on, Bill, An Act Relating to Reporting of Data of Abortions Performed by an Attending Physician. (H. P. 987) (L. D. 1198)

Reported that the same Ought to Pass in New Draft under same title. (H. P. 1628) (L. D. 1831)

Comes from the House, the Bill, in New Draft, Passed to be Engrossed.

Which Report was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Huber.

Mr. HUBER: Mr. President and Members of the Senate, I see distributed on our desk a letter from John Carey, Supervisor of Vital Records, Department of Human Services, dated April 22 and urging support for this Bill.

I am in possession of another letter from the same person dated June 14th to a Member of the other Body. I would like to read this memo, again from John Carey, to a Member of the other Body. "This note is in regard to our telephone conversation of June 13, 1977 concerning L. D. 1198" An Act Relating to Reporting of Data of Abortions Performed by an Attending Physician. Where we did favor this Legislation because it would provide for the filing of induced abortions per se, we will have to point out that there already are laws requiring the filing of all fetal deaths. Title 22, Section 2841 is the law providing for this."

Inasmuch as existing statutes already provide for the recording that would be required under this Bill, I feel that this Bill is unnecessary and intentionally constitutes a source of harassment to traditions and individuals.

I move indefinite postponement of the Bill.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, the information that has just been given to us by the Senator from Cumberland, Senator Huber, was not before the Judiciary Committee, as I recall it. There was evidence before the Committee from a few doctors, and I believe at least one hospital, that this information was not being adequately collected, and that it would be of value to the medical profession and to those who measure the State's health programs, treatment programs of various types if a more exact sort of reporting were required. I think that was the basis on which the Committee went along with the request for this type of information.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I would like to point out to the Senate that regardless of what a letter states which was quoted, there are some other things in this piece of Legislation which might be helpful.

We have now on the Books a provision which is not enforced that is criminal provision regarding a person who conducts an abortion. The last Section of this Bill before us, L. D. 1831, reads that "a physician who reports data on abortion pursuant to this Section shall be immune from any criminal liability for that abortion, under Title 17, Section 51," which would seem to be a backdoor way, but nevertheless a method to encourage physicians

to provide the information which will be helpful in the future regarding the abortions which are performed, guarantee them that they will not be the test case which will be time consuming and expensive and prove that a statute on the Books is un-constitutional.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, this document, L. D. 1831, is a tremendous compromise on the Committee itself. There are some of those, like myself, who are primarily "right to lifers", and there are those on the Committee who favored strongly eliminating the entire Bill as was originally written, and this product is a result of some very serious compromises on the Committee.

The rationale behind the Bill itself is to collect data which is generally unavailable in the State of Maine today on abortions that are performed for medical purposes. Now it is unknown today how many abortions are actually being performed, how many doctors actually report any abortions at all. It is unknown why abortions are being performed. It is unknown the length or size of the fetus that is being aborted, and this information is being sought primarily to aid later on in medical research on the matter of abortion itself.

In a letter that I have received from Dr. Lionel Tardiff out of Lewiston, and he has stated that medicine has been a long time or long standing practice that any tissue removed from the body at the time of surgery is sent to laboratory where tissue is weighed and measured and duly reported. It also should be noted that ultrasound which is a very modern technological development, is presently being used in every hospital in the State where pregnancy is involved at its early stage, this method used to determine the distance between two bones in the baby's skull. All of these, to dispense with further reading, all of these measurements are being done in hospitals today, and it is nothing to put them on a piece of paper and ship them up to Augusta, which is going to help medicine in the State of Maine to advance itself, and to assist the medical society in furthering their knowledge of the early development of childhood.

I would urge that the Members of the Senate to strike and not support the Motion to indefinitely postpone.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate, I would urge the Senate to go along with the Motion to indefinitely postpone this Bill.

There are contradictions in this Bill. It says, last page, Section 2, "A physician who reports data on abortion shall be immune from criminal liability for that abortion under Title 17, Section 51." A Court decision was handed down by Judge Gignoux of the U.S. District Court, February 19, 1973, and it states in that decision by Maine Supreme Court "the Maine Abortion Law, Section 17 MRSA Section 52, unambiguously prohibits all abortions not necessary for the preservation of the mother's life and is hence void and unenforceable under the 14th Amendment, Roe vs. Wade. Now that is our Supreme Court in the State of Maine saying that, so then to put a statute on the Books saying that you are not liable under that statute does not make sense to me.

Also, I think if you read the Bill and look what it says, to me it is just not helping any way the medical profession. The Bill is intended in every way to, I think try to make abortion distasteful to doctors, and I would say that abortion, in most cases, is a tragedy for the woman involved, and probably for the family involved in most cases, but to put this on the Books to me is no help. If you read it, it says "the doctor may weigh in grams the fetus aborted, measure in

centimeters the fetus aborted from crown to rump, the sitting height," and so on. I do not believe that this Bill belongs on the Books here in the State of Maine.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I agree with the good Senator from Androscoggin, Senator Mangan, I think that this is a vital piece of Legislation. There are those of us in the State who detest abortion. We look upon certain records that today come from hospitals that are given to city clerks, such as the Bureau of Vital Statistics, dealing with the birth of every child in this State. For one of those has and always will continue to fight abortion. I think that this State should know what is going on in our hospitals, and this Legislation will continue to serve that knowledge.

Mr. President, when the vote is taken, I request it be taken by the yeas and nays.

The PRESIDENT: A Roll Call has been requested.

The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, as we go into the abortion issue, I think there are a lot of people here who may or may not agree with me on being anti-abortion. I am sure the voters would be interested.

However, be it known that according to a report that I heard last week on the radio, approximately 80 percent of the private hospitals today refuse to do abortions, 70 percent of the public hospitals refuse to do abortions. It becomes a matter of serious conscience.

I understand that the law in the State of Maine today prohibiting abortions has been ruled unconstitutional; therefore, a physician would have no problem reporting the information which is fairly common to all doctors. That is apparently not difficult information to get, and I think that this information will certainly serve to assist the people in the State of Maine as to know what is going on, and will assist the doctors in getting some accurate facts in order to base their judgments on abortions or on abortion Legislation later on to try and provide for the safety of the mother.

As far as the last Section, "a physician who reports data on abortions pursuant to this Section shall be immune from any criminal liability for abortion under Title 17, Section 51." If I recall correctly, there has been no criminal prosecutions for abortion since the law went into effect, so I do not think that the medical community is really afraid of this Section.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Huber.

Mr. HUBER: Mr. President and Members of the Senate, I still contend that the existing law, if this reporting is not being done under Title 22, Section 2841, then we should enforce our existing laws better, not pass an additional law, which, in fact, in the absence of any valid law concerning abortion on the Books now, the Bill before this Body would, in a sense, legalize abortion.

The PRESIDENT: Is the Senate ready for the question?

A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

Obviously, more than one-fifth having arisen, a Roll Call is ordered.

The pending question before the Senate is the Motion by the Senator from Cumberland, Senator Huber, that the Senate indefinitely postpone L. D. 1831.

A yes vote will be in favor of indefinite postponement. A nay vote will be opposed.

The doorkeeper will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

Yeas: Chapman, Cummings, Greeley, Huber, Trotsky.

Nays: Collins, D.; Collins, S.; Conley, Curtis, Danton, Farley, Hewes, Hichens, Jackson, Levine, Lovell, Mangan, Martin, McNally, Merrill, Minkowsky, Morrell, O'Leary, Pierce, Pray, Snowe, Speers, Usher.

Absent: Carpenter, Katz, Redmond, Wyman.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President, I wish to change my vote from yes to no.

The PRESIDENT: The Senator from Sagadahoc, Senator Chapman, changes his vote from yea to nay.

4 Senators having voted in the affirmative, and 24 Senators in the negative, with 4 Senators being absent, the motion to indefinitely postpone does not prevail.

Ought to Pass in New Draft Report accepted.

The Bill Read Once, and Tomorrow Assigned for Second Reading.

Senate

Leave to Withdraw

Mrs. SNOWE for the Committee on Health and Institutional Services on, Bill, "An Act to Establish a Health Facilities Cost Review Board." (S. P. 506) (L. D. 1794).

Reported that the same be granted Leave to Withdraw.

Mr. COLLINS for the Committee on State Government on, Bill, "An Act to Strengthen the Representative Form of State Government and to Improve the Legislative Process." (S. P. 371) (L. D. 1221)

Report that the same be granted Leave to Withdraw.

Mr. McNALLY for the Committee on Labor on, Bill, "An Act Relating to Disqualification from Unemployment Compensation Benefits." (S. P. 270) (L. D. 828).

Reported that the same be granted Leave to Withdraw.

Which Reports were Read and Accepted.
Sent down for concurrence.

Ought to Pass — As Amended

Mr. WYMAN for the Committee on Taxation on, Bill, "An Act to Relieve the Income Tax Burden of the Elderly Retired." (S. P. 442) (L. D. 1530).

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-257).

Mr. LEVINE for the Committee on Marine Resources on, Bill, "An Act to Provide for Marine Resources Education by the Department of Marine Resources and to Establish a Marine Communication Center." (S. P. 441) (L. D. 1552).

Reported that the same Ought to Pass as amended by Committee Amendment "A" (S-253).

Which Reports were Read and Accepted and the Bills Read Once, Committee Amendments "A" Read and Adopted, and the Bills, as amended, Tomorrow Assigned for Second Reading.

Enactors

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

"An Act to Merge the Passenger Tramway Safety Board with the Board of Elevator Rules and Regulations." (S. P. 532) (L. D. 1860)

"An Act Establishing the Maine Student Incentive Scholarship Program." (S. P. 423) (L. D. 1481).

On Motion of Mr. Huber of Cumberland, placed on Special Appropriation Table pending Enactment.

"An Act to Avoid Delays in Payment of Workmen's Compensation Claims because of

the Involvement of Two or More Insurance Carriers." (H. P. 1261) (L. D. 1490).

An Act to Permit Farmers to Shoot Marauding Animals." (H. P. 1242) (L. D. 1467).

"An Act to Repeal Certain Laws Relating to Transportation." (H. P. 1056) (L. D. 1288).

"An Act to Amend the Laws Relating to Criminal History Record Information." (H. P. 1629) (L. D. 1832).

Which were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

"An Act to Prohibit the Sale of Gasoline Below Cost to Destroy Competition." (H. P. 455) (L. D. 560)

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, I would ask through the Chair to anybody on the Committee who can answer to explain the purpose of this Bill.

The PRESIDENT: The Senator from Androscoggin, Senator Mangan, has posed a question through the Chair.

The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, I move L. D. 560 and all its accompanying papers be indefinitely postponed.

The PRESIDENT: The Senator from Oxford, Senator O'Leary, now moves that L. D. 560 be indefinitely postponed. Is this the pleasure of the Senate?

The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I believe the good Senator from Penobscot, Senator Trotsky, is Chairman of the Energy Committee and I wonder if he could respond to the good Senator from Androscoggin.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed a question through the Chair to the Senator from Penobscot, who may answer if he so desires.

The Chair recognizes that Senator.

Mr. TROTSKY: Mr. President and Members of the Senate, this Bill probably will result in an increase in gas cost to the consumer.

The PRESIDENT: Is it now the pleasure of the Senate that this Bill and all its accompanying papers be indefinitely postponed?

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the Motion of the Senator from Oxford, Senator O'Leary, that this Bill and all its accompanying papers be indefinitely postponed, please rise in their places to be counted.

Will all those Senators opposed to the Motion that this Bill and all its accompanying papers be indefinitely postponed, please rise in their places to be counted.

10 Senators having voted in the affirmative, and 17 Senators in the negative, the Motion to indefinitely postpone does not prevail.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, from the excellent explanation I was given by the Honorable Senator from Penobscot, Senator Trotsky, and from the impression that I get that this Bill would equalize all gasoline prices and probably socialism or thereabouts, I would request that this matter be tabled for One Legislative Day to allow me to investigate —

The PRESIDENT: The Chair would advise the Senator that he is debating a tabling Motion.

The Chair recognizes the Senator from Cumberland, Senator Hewes.

Mr. HEWES: Mr. President, I move this item be tabled for One Legislative Day.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, I request a Division.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of tabling this item for One Legislative Day, please rise in their places to be counted.

Will all those Senators opposed to tabling this item for One Legislative Day, please rise in their places to be counted.

16 Senators having voted in the affirmative, and 12 Senators in the negative, the Motion to table does prevail.

Resolve, "Authorizing the Secretary of State to Convey the State's Interest in a Lot in Waldoboro, Lincoln County, to Clarify Title." (H. P. 1193) (L. D. 1426).

On Motion of Mr. Pray of Penobscot, Tabled One Legislative Day. Pending passage.

Emergency

"An Act to Clarify the Criminal History Record Disclosure Law." (H. P. 1039) (L. D. 1280).

On Motion of Mr. Conley of Cumberland, Tabled One Legislative Day, pending enactment.

Orders of the Day

The President laid before the Senate:

HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act Relating to Judicial Review of Public Utilities Commission Decision." (H. P. 226) (L. D. 290) Majority Report — Ought to Pass: Minority Report — Ought Not to Pass

Tabled — Earlier in the Day by Senator Speers of Kennebec Pending — Motion of Senator Collins of Knox to Accept Minority Report.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I request a Division.

It seems to me that this is an issue which is very detailed and very complex, and although it has been the subject of much discussion, both in Committee and in other rooms and in the Halls of the Legislature, I think it would be helpful if we had a little review of what is involved here.

The proposal is one which comes to you as the Majority Report from the Judiciary Committee, a Report which I signed, which Report would provide for the elimination of Section 305 of Title 35 of the Maine Statutes regarding the Public Utilities Commission and the law which it controls. Basically the question, as I see it, is one of whether or not the Supreme Judicial Court of the State would be able to substitute its judgment for that of the Public Utilities Commission on issues of fact, as well as issues of law.

It seems to me that we have created a Public Utilities Commission which has the necessary expertise in matters of economics and finance, and is able to determine factual matters, and that questions of law and law alone should be left to the law Court, so I would suggest that it would be helpful to the Public Utilities Commission to turn down the pending Motion, and then to accept the Majority Report, and, if it seems to be necessary, in some way to amend the Bill at a future time.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate, today is the day when the Maine Senate has a fine opportunity to justify its existence. By passing the Utility Bill that is before us today, we can substantially reduce the utility bills which are being passed on to our citizens. We can actually save our citizens more