

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

Volume II

First Regular Session

May 7, 1979 to June 15, 1979

INDEX

First Confirmation Session

August 3, 1979

INDEX

First Special Session

October 4-5, 1979

INDEX

Second Special Session

October 10-11, 1979

INDEX

Second Confirmation Session

December 7, 1979

INDEX

knows about firefighting or police work. I would gather a majority of them still think you have to use a key to turn on fire engines.

The fact that there is no ultimate resolve in the labor dispute for these public servants is why we must address the issue of binding arbitration and look at it as the very last step to end the contract dispute. These people cannot strike, the public does not want them to strike, they do not want to strike, so what are we going to do? Leave them held there forever.

We have instances in this state of contracts that are not settled for as long as 10-plus months, and I find that ludicrous and ridiculous. Management too often procrastinates and the end result is that the citizens, the people in your cities and towns, sit nervously by and they should not have to. With cities and towns facing dollar problems more and more down the road, I contend that the collective bargaining process will be more and more abused. And since these public service people are charged with public protection responsibilities, they will bear the brunt of department cutbacks.

Our fire department in Portland, at one time, had over 200 men; we now have 167. They are laid off by attrition—wonderful term.

I predict and I am confident that if we do not find a way to stop the foolishness to these kinds of employees, we will, indeed, have a legal strike and work slowdown, and I don't want that to happen. I don't believe the citizens in the state need to be put in the position of worrying about what happened out in Minnesota and other communities, down in New Orleans and what not, so I say to you, please look at binding arbitration not as an end run to get a resolve by somebody outside of the system but to look at it as the ultimate resolve in our statutes, and I maintain that critical service employees must be and have to be the first group to be considered.

The SPEAKER: The Chair recognizes the gentlewoman from Lewiston, Mrs. Berube.

Mrs. BERUBE: Mr. Speaker, just for my own information, I am a little confused. We have two L. D.'s which seem to address the same problem, the issue. Upon looking at the committee amendment to L. D. 1463, which concerns the arbitration of municipal fire and police departments, in that committee amendment, the University of Maine police are placed under that bill, and as I look at the amendment which Representative Beaulieu has just presented, the University police are also put in, so I am a little confused, I guess.

The SPEAKER: The gentlewoman from Lewiston, Mrs. Berube, has posed a question through the Chair to the gentlewoman from Portland, Mrs. Beaulieu, who may answer if she so desires.

The Chair recognizes that gentlewoman.

Mrs. BEAULIEU: Mr. Speaker, they were not included in the amendment that was prepared for the committee. Therefore, I chose to amend them by using this process because I had no other choice. I consider them critical service employees.

The SPEAKER: The Chair recognizes the gentleman from Millinocket, Mr. Marshall.

Mr. MARSHALL: Mr. Speaker, Ladies and Gentlemen of the House: I know that it is late, but this is not the bill which I co-sponsored and I thought, knowing what my vote is going to be when the vote is taken, I might describe why I can vote for one and not the other.

I believe the comments of Mr. Garsoe of Cumberland have highlighted the questions that I had with this bill. I think it goes too far and its impact is too vast, and I don't think it is as moderate an approach as my bill, and I will be voting in opposition to this bill.

The SPEAKER: The Chair recognizes the gentleman from Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I know that the hour is late but I have a 300 mile drive to take, I am the one that travels the furthest.

I would think that this bill ought to pass. We are not forcing anyone to go to arbitration. If management gets together with labor and are reasonable and respect one another, you will never have arbitration.

The SPEAKER: A roll call has been ordered. The pending question before the House is on the motion of Mrs. Lewis of Auburn that this bill and all its accompanying papers be indefinitely postponed.

The Chair recognizes the gentlewoman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, I would like to pair my vote with the gentleman from Livermore Falls, Mr. Brown. If he were here, he would be voting yes and I would be voting no.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, I would like to pair my vote with the gentleman from Auburn, Mr. Hughes. If he were here, he would be voting no and I would be voting yes.

The SPEAKER: The pending question is on the motion of the gentlewoman from Auburn, Mrs. Lewis, that this bill and all its accompanying papers be indefinitely postponed.

Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Aloupis, Austin, Berry, Berube, Birt, Bordeaux, Boudreau, Bowden, Brown, K. L.; Bunker, Call, Carrier, Carter, D.; Carter, F.; Churchill, Canary, Cunningham, Curtis, Damren, Davis, Dellert, Dexter, Drinkwater, Dudley, Dutremble, L.; Fenlason, Fillmore, Garsoe, Gavett, Gillis, Gould, Hall, Hanson, Higgins, Huber, Hunter, Hutchings, Immonen, Jackson, Kane, Kany, Kiesman, Lancaster, LaPlante, Leighton, Leonard, Lewis, Lizotte, Lougee, Lowe, Lund, MacBride, Marshall, Masterman, Masterton, McMahon, McPherson, Nelson, A.; Payne, Peltier, Peterson, Reeves, J.; Rollins, Sewall, Sherburne, Silsby, Small, Smith, Stetson, Stover, Strout, Studley, Tarbell, Torrey, Tozier, Twitchell, Wentworth, Whittmore, Wood.

NAY—Bachrach, Baker, Barry, Beaulieu, Benoit, Blodgett, Brannigan, Brennerman, Brodeur, Brown, A.; Brown, K. C.; Carroll, Chonko, Cloutier, Connolly, Cox, Davies, Diamond, Doukas, Dow, Dutremble, D.; Fowlie, Gowen, Gwadosky, Hickey, Howe, Jacques, E.; Jacques, P.; Jalbert, Joyce, Laffin, Locke, MacEachern, Mahany, Martin, A.; Maxwell, McHenry, McKean, McSweeney, Michael, Mitchell, Nadeau, Nelson, M.; Nelson, N.; Paradis, Pearson, Post, Reeves, P.; Rolde, Simon, Soulas, Theriault, Tierney, Tuttle, Vincent, Violette, Vose, Wyman, The Speaker.

ABSENT—Elias, Hobbins, Kelleher, Matthews, Morton, Norris, Roope, Sprowl.

PAIRED—Brown D.- Prescott; Gray - Hughes.

Yes, 79; No, 60; Absent, 8; Paired, 4.

The SPEAKER: Seventy-nine having voted in the affirmative and sixty in the negative, with eight being absent and four paired, the motion does prevail.

The SPEAKER: The Chair recognizes the gentlewoman from Auburn, Mrs. Lewis.

Mrs. LEWIS: Mr. Speaker, having voted on the prevailing side, I now move reconsideration and hope you all vote against me.

The SPEAKER: Mrs. Lewis of Auburn, having voted on the prevailing side, now moves reconsideration. Those in favor will say yes; those opposed will say no.

A Viva Voce Vote being taken, the motion did not prevail.

Sent up for concurrence.

Bill "An Act Concerning Retirement for State Prison Employees" (H. P. 1138) (L. D. 1404) (C. "A" H-422)

Was reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed as amended and sent up for concurrence.

Bill "An Act to Insure that Informed Consent is Obtained before an Elective Abortion is Performed" (S. P. 484) (L. D. 1482) (S. "A" S-190 to C. "A" S-182)

Was reported by the Committee on Bills in the Second Reading and read the second time.

The SPEAKER: The Chair recognizes the gentlewoman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker, I move the indefinite postponement of this bill and all its accompanying papers.

I know what it must feel like to go off to battle every day in the minority and still feel that you must do it very single time because it is something that you believe in that much.

Addressing L. D. 1482, there is already a well developed body of law which imposes a duty on physicians to inform all patients of any risks or alternatives to any proposed treatment or procedure before obtaining the patient's consent. This bill is an unnecessary duplication of existing law.

The requirement that no abortion may be performed within 48 hours of a woman's consent places an unreasonable burden on those women who have already made up their minds.

This is very different from the situation involving encyclopedias and siding on a house. In those cases, the consumer needs protection from the salesman who may be too aggressive, while in the abortion situation, the consumer seeks out the physician's services.

The 48 hour waiting period places an unreasonable financial burden on women seeking an abortion. In a rural state like Maine, the waiting period may be too long and time-consuming trips to the doctors or even staying in a hotel for two nights. This places a large financial burden on women needing abortions.

The bill requires physicians to inform their patients seeking abortions about "information concerning public and private agencies that will provide the woman with economic and other assistance to carry the fetus to term." This provision requires physicians to be experts on charitable and welfare benefits available to women. The physician will have to be aware of all the latest benefits available under all state and federal programs. In addition, the physician will have to know about the benefits and classes provided by every prepared childbirth group. This requirement places an intolerable burden on physicians trying to provide services to which women have a constitutional right.

This bill is unconstitutional. On March 5, 1979, the United States Supreme Court ruled in *Freydman versus Ashcroft* that a similar Missouri statute was unconstitutional. The court bases a decision on the finding that the law singled out abortion from other surgical procedures for "imposition of this strait-jacket approach" and also "interfered with the woman's right to consult with her physician concerning her decision of an abortion without undue restriction by the state."

This bill not a pro-truth bill nor a pro-consumer bill. This bill is simply an attempt to harass both women exercising their constitutional rights to have an abortion and doctors who provide that service. If members of the legislature feel obligated to vote against abortion, they should do so by voting the viability bill we have already had. At least that bill honestly addressed the issue.

This bill is an unconstitutional invasion of a doctor-patient relationship for the sole purpose of trying to restrict the first trimester of abortions, which the Supreme Court has said that states may not prohibit.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Simon.

Mr. SIMON: Mr. Speaker, Ladies and Gentlemen of the House: I will be brief. I have my stop watch here.

With respect to *Freydman versus Ashcroft*, to which the gentlelady from Newcastle referred

I would simply like to clear up the matter because the good gentleman from Farmington, Mr. Morton, distributed a piece of literature with a quotation from *Freidman versus Ashcroft* contending that it demonstrated the unconstitutionality of the statute we have before us.

Freidman versus Ashcroft did not hold informed consent unconstitutional. It held one aspect of one state's informed consent statute unconstitutional. That provision required the physician to make some statements about custody of a live born fetus. The *Freidman* court intimated and another court held that that rule itself was unconstitutional, the rule about losing custody of a live born fetus, if you were the one to have the abortion, and that is one of the reasons why it held that requirement unconstitutional.

The second reason why the *Freidman* court held that statute unconstitutional was because another part of the law which was not challenged forbade the abortion of a viable fetus. Therefore, a legal abortion could not result in a live born child.

Second, this particular provision of the statute that was held unconstitutional made no distinction between the part of pregnancy which the warnings had to be given. Therefore, if the threat was that of losing custody of a live born fetus, the statute did absolutely no good, the courts held that it was meaningless.

As to the general contention that this statute is unconstitutional, in *Planned Parenthood Association versus Fitzpatrick*, 401, Federal Supplement 554, Act 583, 1975 — the U. S. Court of Appeals held a statute very much like the one we are dealing with to be constitutional. That, in turn, Mr. Speaker, was upheld by the United States Supreme Court unanimously under the name of *Franklin versus Fitzpatrick* in 1976.

Because I am getting snickers and dirty looks, I will quit now. If anyone would like to talk to me about this later, I would be more than happy to do so, but I urge you to vote against the pending motion for indefinite postponement.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one-fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: I appreciate your indulgence. I will only be a few moments.

The gentleman from Lewiston, Mr. Simon, pointed out incorrectly that this provision in the Missouri law, which the court said would not be constitutional for the doctor to have to talk about, was declared unconstitutional — that is not correct. That court did not decide that; they said it was perfectly okay for that to be on the books. It just said that the doctors should not have to talk about it, just as I put out in this flyer. I apologize for the words at the top, but I wanted to get everyone's attention. I didn't want to have to spend the time reading it on the floor, because I knew I would get rather frowning looks from the Speaker's platform, but I trust you will all read this and vote in favor of the motion to indefinitely postpone.

The SPEAKER: The pending question is on the motion of the gentlewoman from Newcastle, Mrs. Sewall, that this Bill and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Aloupis, Bachrach, Baker, Benoit, Berry, Bordeaux, Brannigan, Brenerman, Brown, A.; Brown, K. L.; Connolly, Davies,

Davis, Dellert, Doukas, Dow, Drinkwater, Fenlason, Garsoe, Gowen, Gwadosky, Hall, Higgins, Howe, Huber, Hutchings, Immonen, Jackson, Kiesman, Leonard, Locke, Lowe, Lund, MacEachern, Masterton, McKean, Morton, Nelson, M.; Post, Reeves, J.; Reeves, P.; Rollins, Sewall Small, Sprowl, Studley, Tarbell, Tozier, Vose, Wentworth.

NAY — Austin, Barry, Beaulieu, Berube, Birt, Blodgett, Boudreau, Brodeur, Brown, K. C.; Bunker, Call, Carrier, Carroll, Carter, D.; Carter, F.; Chonko, Churchill, Cloutier, Conary, Cox, Cunningham, Curtis, Damren, Dexter, Diamond, Dudley, Dutremble, D.; Dutremble, L.; Fillmore, Fowley, Gavett, Gillis, Gould, Gray, Hanson, Hickey, Hunter, Jacques, E.; Jacques, P.; Jalbert, Joyce, Kane, Kany, Kelleher, Laffin, Lancaster, LaPlante, Leighton, Lewis, Lizotte, Lougee, MacBride, Mahany, Marshall, Martin, A.; Masterman, Maxwell, McHenry, McMahan, McPherson, McSweeney, Michael, Mitchell, Nadeau, Nelson, A.; Nelson, N.; Paradis, Payne, Pearson, Peltier, Peterson, Prescott, Rolde, Sherburne, Silsby, Simon, Smith, Stetson, Stover, Strout, Theriault, Tierney, Torrey, Tuttle, Twitchell, Violette, Whittemore, Wood, Wyman, The Speaker.

ABSENT — Bowden, Brown, D.; Elias, Hobbs, Hughes, Matthews, Norris, Roope, Soulas, Vincent.

Yes, 50; No, 91; Absent, 10.

The SPEAKER: Fifty having voted in the affirmative and ninety-one in the negative, with ten being absent, the motion does not prevail.

Thereupon, the Bill was passed to be engrossed as amended and sent up for concurrence.

The SPEAKER: The Chair recognizes the gentleman from Fort Kent, Mr. Barry.

Mr. BARRY: Mr. Speaker, having voted on the prevailing side, I now move reconsideration and hope you all vote against me.

The SPEAKER: The gentleman from Fort Kent, Mr. Barry, having voted on the prevailing side, now moves reconsideration. Those in favor will say yes; those opposed will say no.

A Viva Voce Vote being taken, the motion did not prevail.

On motion of Mrs. Mitchell of Vassalboro, the House voted to take from the table the seventh tabled and unassigned matter:

Bill, "An Act to Fund and Implement Agreements between the State and the Maine State Employees Association and to Fund and Implement Benefit for Managerial and other Employees of the Executive Branch Excluded from Coverage under the State Employees Labor Relations Act" (H. P. 1361) (L. D. 1597)

— In House, Passed to be Engrossed without reference to a Committee on May 2, 1979; — In Senate, Indefinitely Postponed.

Tabled—May 10, 1979 by Mrs. Mitchell of Vassalboro.

Pending—Further Consideration.

On motion of Mrs. Mitchell of Vassalboro, the House voted to recede.

Mr. Pearson of Old Town offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-443) was read by the Clerk.

The same gentleman offered House Amendment "A" to House Amendment "A" and moved its adoption.

House Amendment "A" to House Amendment "A" (H-472) was read by the Clerk and adopted.

House Amendment "A" as amended by House Amendment "A" thereto was adopted.

The Bill was passed to be engrossed as amended in non-concurrence and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Passed to be Engrossed Emergency Measure

An Act to Extend until July 1, 1980, the Date

for the Newport Water District to Purchase the Property of the Maine Water Company (H. P. 1334) (L. D. 1581)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 135 voted in favor of same and one against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act Prohibiting a Bank Holding Company from Owning more than One Type of Financial Institution (S. P. 91) (L. D. 177)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. D. Dutremble.

Mr. D. DUTREMBLE: Mr. Speaker, I would like to have this item tabled for one legislative day.

Mr. Howe of South Portland requested a division.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Biddeford, Mr. D. Dutremble, that this item be tabled for one legislative day pending passage to be enacted. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

68 having voted in the affirmative and 29 in the negative, the motion did prevail.

Passed to be Engrossed

An Act to Clarify the Publication of School Records (S. P. 123) (L. D. 249) (C. "A" S-166)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Include Services Performed by Chiropractors under Health Insurance Policies and Health Care Contracts which Pay Benefits for those Procedures if Performed by a Physician (S. P. 131) (L. D. 308) (C. "A" S-164)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Howe.

Mr. HOWE: Mr. Speaker and Members of the House: I would like to make a couple of comments for the record at the urging of the proponents of the bill. In the bill it says that the services will be covered for those Chiropractors with whom Blue Cross—Blue Shield simply refuses to contract with chiropractors and I wanted to say that it is the position of myself and the majority of the committee, I believe, that it is our intention this bill will require Blue Cross—Blue Shield to contract with chiropractors who are licensed and who comply with the law.

Thereupon, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Enactor

Tabled and Assigned

An Act to Prohibit the Practice of a Mandatory Retirement Age (S. P. 260) (L. D. 790) (C. "A" S-162)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Wiscasset, Mr. Stetson.

Mr. STETSON: Mr. Speaker, I ask that this be tabled for one legislative day.

Mr. Theriault of Rumford requested a division.

The SPEAKER: The pending question before the House is on the motion of Mr. Stetson of Wiscasset that this item be tabled for one legislative day pending passage to be enacted. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.