

MAINE STATE LEGISLATURE

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communication with the department about this fiscal note and their support of it, one way or the other?

The **SPEAKER**: The Representative from Sanford, Representative Tuttle has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Skowhegan, Representative Hatch.

Representative **HATCH**: Mr. Speaker, Men and Women of the House. Yes, there has been communication. The \$57,850 is the amount that this will be reduced by. I did that simply because I knew that this thing wouldn't fly with that kind of a price tag on it. By contacting the General, it was agreed that they would do this and go through the armories to take care of it.

Subsequently, **House Amendment "A" (H-265)** to **Committee Amendment "A" (H-146)** was **ADOPTED**.

Committee Amendment "A" (H-146) as Amended by **House Amendment "A" (H-265)** thereto was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED** as Amended by **Committee Amendment "A" (H-146)** as Amended by **House Amendment "A" (H-265)** thereto in **NON-CONCURRENCE** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

An Act to Clarify the Maine Turnpike Authority's Power Regarding Confidentiality of Information

(S.P. 90) (L.D. 317)
(C. "A" S-10)

TABLED – March 30, 2001 (Till Later Today) by Representative COLWELL of Gardiner.

PENDING – **PASSAGE TO BE ENACTED**.

Subsequently, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Bill "An Act to Eliminate Unnecessary Paperwork for Wage-hour Compliance"

(H.P. 423) (L.D. 544)
(C. "A" H-114)

TABLED – April 25, 2001 (Till Later Today) by Representative TUTTLE of Sanford.

PENDING – **PASSAGE TO BE ENGROSSED**. (Roll Call Ordered)

The **SPEAKER**: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. I do just want to briefly clear up an impression that may have been given in the debate of last week with regard to what this bill was all about. I will repeat, it is not a paperwork bill. It is a bill that seeks to eliminate overtime protections for certain select workers in our state. This is a backdoor stealth approach to eliminate these protections. I will read to you from a memorandum of Ann Harriman who has the responsibility with the Department of Labor for monitoring overtime. She states, "Under current law people who work inside with controlled hours must receive time and half their regular hourly rate for all hours worked in excess of 40 in one week." The people that this law is attempting to exempt, automobile service writers and automobile body shop technicians are currently required to receive overtime pay. If the new legislation is passed, these people will no longer have to receive overtime pay. Again, I ask you not to allow the overtime protections for our workers to be whittled down piece-by-piece or worker-by-worker. Vote against the pending motion

to accept the Majority Report so that the Minority Report can be passed. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. I am not going to say what I would like to say in response to that last speech from the floor. This is a paperwork reduction bill. Late last week I distributed a form that illustrates that fact. Right now there is another form that is coming out that reiterates the same thing over again. There are three currently in any automobile dealership. There are three people in the workforce in those dealerships that are already exempted from the wage and hour reporting requirements, the automobile sales people, the parts people and the automobile mechanics. All we are asking is that the automobile service writer and the auto body technician be included along with those other two categories.

What happens now when an automobile service writer gets his paycheck at the end of the week, his hourly rate is computed, his overtime rate is computed and virtually all of these people are on an incentive plan, his incentive pay is computed and it comes up to a total salary for that week. In the example that I gave you it was \$775. The slip then has to go to the office at the dealership where the \$775 has to be broken down because of the wage hour compliance. It has to be broken down to hourly rate and then in this 45-hour week, it has to show the five hours of overtime. This is a procedure that has to be followed every single week with these people who are on incentive plans because their pay changes every week. By eliminating or exempting these people from the wage hour compliance law, we are going to be able to eliminate that last step of sending it to the administrative office and have their pay computed based on their 40-hour week, plus the five hours of overtime.

The automobile mechanic right now is already exempted. If he works a 45-hour week, their pay comes up to, in the example I gave was \$575, they take the deductions out of that pay and he get his check. There is no additional computation required. This bill does not change the total amount of pay received by the employee under terms of employment acceptable to and desired by the employees. It does reduce continuous office work of calculating an hourly rate of pay after total earnings are determined through incentive plans. It results in identical requirements under federal and state law for those employees with incentive pay plans. It does not change pay plans and overtime calculations for any employee who is not on an incentive plan. I reiterate. It is not an attempt to steal overtime pay from the employees. It is a paperwork reduction bill. Thank you Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Winslow, Representative Matthews.

Representative **MATTHEWS**: Mr. Speaker, Men and Women of the House. With all due respect to the good Representative from Carmel, my good friend, we differ on many things, but he always speaks eloquently in favor of his position. I want to bring to your attention today a couple of concerns that I have with this legislation. First of all, we are being asked to take away the opportunity for individuals to have overtime computed in their pay, make no doubt about it. This law extends an exemption from the state overtime law to additional employees of car dealerships. It may create confusion to employers who are covered by federal law because exemptions are not the same. Also, I want to read for the record, the concerns shared to the Committee on Labor by the Commissioner. "This legislation would exempt from overtime compensation the employment positions of automobile body shop technician and automobile service writer. We believe this legislation would be unduly

confusing and of little affect. Against the backdrop of little real benefit being achieved and the high risk for a mistaken violation of federal law, the Department of Labor respectfully urges the committee to vote against LD 544."

As I have stated, I believe, in other forums on this legislation and now for the record in the House floor, the person that put this bill forward, the automobile dealerships, their chief lobbyist was there asking for this change. Whenever we are before a legislative body or committee, I think it is important for the Legislature to remember those that might not be in attendance. There were no automobile technicians there. There were no service writers there. I have not heard from any of these folks as I have traveled about and talked to my constituents and gone to dealerships. I have never heard about this issue. I never saw these folks clamoring down the doors. We want to be exempted from overtime. Ladies and gentlemen, we don't need it and we don't want it. Has anybody heard that cry? One person came to the Committee on Labor. One person from the industry asking that this exemption be given. I shouldn't be suspect. I am Irish and Greek. I am an American. I shouldn't be suspect. That is not my upbringing I guess.

I want to ask a question. I asked that gentlemen that represented the industry directly a couple of questions. Number one, how many people does this affect? Number two, what are these folks getting in terms of compensation? I checked with our legislative analyst the other day. We have two and we are very fortunate that they do a great job for us. I exhausted every resource I could find and nothing was returned to the Committee on Labor or to me. We got nothing from the industry in terms of support for this legislation. I would remind the members in this House of recent history when we are asked to make changes in consumer protection, in labor law protection, in environmental protection, you can go down the line when the folks that are most affected by the change are no here. We are here everyday to protect those voices that are not heard, that don't have a lobbyist out there in the halls that gets a wonderful compensation. I would like to know what their overtime rate is. Those are the folks that I am here to protect. Those are the folks that we cannot forget each and everyday that we come here.

With all due respect, ladies and gentlemen, I do not believe that this bill is in the best interest of the people of the State of Maine or the people affected. Mr. Speaker, I would ask that this bill and accompanying papers be Indefinitely Postponed.

Representative MATTHEWS of Winslow moved that the Bill and all accompanying papers be **INDEFINITELY POSTPONED**.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative McKenney.

Representative MCKENNEY: Mr. Speaker, Ladies and Gentlemen of the House. We have just heard that the people affected by this bill didn't appear before the Labor Committee. There is a very good reason for that because those people, those body shop people and those service writers, are going to be paid the same, whether this bill passes or not. They have no reason to come to the Labor Committee to ask for any kind of an exemption. Their pay is by commission. It is by commission today and it is going to be by commission tomorrow because that is the way they were hired. The people that should have been in front of the Labor Committee are the overworked office staff that has to do all this paperwork to comply with antiquated wage and hour laws.

That handout in front of you has question marks by the 40-hour and the 5-hour mark. Here is your homework, should you choose to do this homework, you take the time to figure out how much \$775 would be for 40 hours of work and 5 hours of overtime? That office staff has to do that every pay period because it changes. Multiply that by a half dozen employees at

a normal size dealership and you will see the amount of work they have to go through every pay period to conform that report to something that is acceptable by the wage and hour people. This is not about stealing anybody's overtime. These folks are highly compensated individuals. They probably make in the Portland area anyway \$40,000 to \$60,000 a year. There is no amount of overtime that would compensate for that. This more than makes up for the overtime. I urge you to defeat this Indefinite Postponement. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House. I have done my homework. Let me tell you the rest of the story about the pink sheet of paper. I am concerned about what this bill does, not just to overtime, but to the minimum wage. Because of the way this salary is, or whatever we call it, is backed out, unless their hourly rate is more than \$7.72 an hour, which is the time and a half for a person making minimum wage, there is a very real possibility that when this is back computed, it actually makes the base rate less than \$5.15 an hour. That is my concern about what this is doing to minimum wage, as well as the overtime rate. I understand the argument about this is what we have decided we are going to pay these people anyway and then we add a couple hundred bucks commission to somebody who, in fact, is making minimum or maybe even \$6 or \$7 an hour. When you back this out, that makes their basic hourly rate less than minimum wage. I urge you, like the good Representative from Winslow, to vote the correct way on this bill.

Representative TREADWELL of Carmel **REQUESTED** a roll call on the motion to **INDEFINITELY POSTPONE** the Bill and all accompanying papers.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative McKenney.

Representative MCKENNEY: Mr. Speaker, Ladies and Gentlemen of the House. After the session I am taking applications for any employee that is a service writer or a body shop technician that would like to work for minimum wage. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Mayo.

Representative MAYO: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative MAYO: Mr. Speaker, Men and Women of the House. To anyone that might be able to answer, can you tell me the position of the Commissioner of Labor on this particular bill?

The SPEAKER: The Representative from Bath, Representative Mayo has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative TREADWELL: Mr. Speaker, Men and Women of the House. The Director of the Bureau of Labor Standards appeared before the committee to testify on the bill. The testimony was that there may be some conflict between federal law and state law. Therefore, the amendment directs the state to go by the expanded definitions in the federal law and apply that to the state's interpretation of the law. That is what the bill does.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House. If I could read from the letter of February 20, 2001

from Valerie Landry, Commissioner of the Department Labor, the last paragraph of her letter said, "Against a backdrop of little real benefits being achieved and the high risk for a mistaken violation of federal law, the department respectfully urges the committee to vote LD 544 out, Ought Not to Pass."

The **SPEAKER**: The Chair recognizes the Representative from Scarborough, Representative Clough.

Representative **CLOUGH**: Mr. Speaker, Ladies and Gentlemen of the House. I would like to respond to the good Representative from Cumberland's question. The hourly rate that we would find is \$16.32 an hour. The pay for the five overtime hours would be \$24.48. That should dispel anybody's problems about being under the minimum wage. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. I will disclose up front that I am involved with three car dealerships and out of my central office is where we do the payroll for those dealerships. I don't understand the automatic suspicion of anytime a business comes forward and says, I need some help in reducing paperwork. There is this automatic flag that goes up among people in this body that thinks that we must be hiding something. Somebody needs to explain that to me.

The **SPEAKER**: The Chair recognizes the Representative from Van Buren, Representative Smith and asks for what reason the Representative rises?

Representative **SMITH**: Mr. Speaker, point of order. There should be no impugning of people's motives or questioning of people's motives or questioning of people's motives in speaking here.

The **SPEAKER**: The Chair would remind members in a general way that questioning the motives or actions of another member is inappropriate. The Representative may proceed.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. I am not exactly sure what that was all about, but I will continue. I don't believe I affronted anyone and if I did, I apologize. We, in the business community, are asking for a simple change here. This does not affect the paycheck of anyone. The person will continue to get paid whatever is due to them. If they are not, they will let the company know. Believe me. If you ever do payroll for your employees and you make a mistake, the first person who hears about it is the payroll clerk. This will not have any affect on what an employee receives. You can see the problem here with how to report this every single week. This is a simple bill. It reduces paperwork. It has no hidden agenda or no hidden meaning behind it. These people make a lot of money. This has nothing to do with minimum wage. I ask you to support the small dealership that has one payroll clerk trying to figure this out every week. Please, vote against the Indefinite Postponement and let's go on to pass the Majority Report. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Brooklin, Representative Volenik.

Representative **VOLENIK**: Mr. Speaker, Men and Women of the House. I was just looking at all these numbers and I thank the Representative for providing them. It seems to me that if we really want to save paperwork or if the company really wants to save paperwork, this company that wants to give \$775 to its service writer, if it simply gave its service writer \$16.32 an hour, as was mentioned, for a 40-hour week and then for five hours of overtime, \$122.37, that would work out to the same amount. Also, think about this. Let's say that worker then works 10 hours of overtime. Now that worker is going to be getting one and a half times for his overtime and his is going to be making \$897.43 for working that overtime. Let's say he works 20 hours of overtime. Now he is going to be making \$1,142.23 per week.

He is going to be affectively paid for his overtime and that is a pretty simple thing for any car dealership to figure out for any one of its employees. Thank you.

Representative McNEIL of Rockland **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative Mendros.

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. Three years ago I drove down to Florida and all the way down I rode down with a good friend of mine named Dan who lives in Waterboro. He does exactly this kind of work. He explained more about this kind of work than I thought I would ever want to know. When I saw this, I thought maybe I ought to give Dan a call and see what he thinks since he is affected by it. He thinks it is a big hassle and a big waste of time and it certainly doesn't help him to have to do this extra paperwork. What we are failing to see is incentive pay. You can't calculate incentive pay by the hour. You do a good job, you get incentive pay. Incidentally, last year Dan made \$60,000 doing this kind of work. That means you would have to work 1,200 hours to jeopardize minimum wage. He has a very beautiful wife and child that he spends a lot of time with. He didn't work 1,200 hours last year. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Windham, Representative Tobin.

Representative **TOBIN**: Mr. Speaker, Ladies and Gentlemen of the House. The good Representative from Lewiston stated that he knew a friend that was in this business. In my prior life, I was a service writer and a service manager. We did not get paid any amount per hour. We got paid by the amount of work that was carried on in the business. What is happening is you have to take that money and convert it to an hourly rate. This pink slip is a little bit confusing because it lists 40 hours at so much. They actually have the answer before they start and they have to back up. There is nothing to do with hourly rate here at all. Believe me, I wouldn't have worked for minimum wage.

The **SPEAKER**: A roll call has been ordered. The pending question before the House is Indefinite Postponement of the Bill and all Accompanying Papers. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 84

YEA - Ash, Bagley, Baker, Berry RL, Blanchette, Bouffard, Brannigan, Brooks, Bryant, Bull, Canavan, Chizmar, Clark, Colwell, Cote, Cowger, Cummings, Desmond, Dorr, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Green, Hatch, Hawes, Hutton, Jacobs, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Mailhot, Marley, Matthews, Mayo, McDonough, McGlocklin, McKee, McLaughlin, Michaud, Mitchell, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Pineau, Richard, Richardson, Rines, Savage, Simpson, Skoglund, Smith, Stanley, Sullivan, Tarazewich, Thomas, Tracy, Tuttle, Twomey, Usher, Volenik, Watson, Wheeler GJ.

NAY - Andrews, Annis, Belanger, Berry DP, Bowles, Bruno, Buck, Bumps, Carr, Chase, Chick, Clough, Collins, Crabtree, Cressey, Daigle, Davis, Dugay, Duncan, Duprey, Foster, Glynn, Gooley, Haskell, Heidrich, Honey, Jodrey, Kasprzak, Labrecque, Ledwin, MacDougall, Madore, McGowan, McKenney, McNeil, Mendros, Michael, Morrison, Murphy E, Murphy T, Nass, Nutting, O'Brien JA, Peavey, Perkins, Pinkham, Povich, Rosen, Schneider, Sherman, Shields, Snowe-Mello, Tessier, Tobin D, Tobin J, Trahan, Treadwell, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Bliss, Bunker, Dudley, Goodwin, Hall, Lovett, Marrache, Muse C, Muse K, Perry, Quint, Stedman, Mr. Speaker.