

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Tenth
Legislature***

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

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their employees prior to a holiday so they don't have to pay them. This bill has nothing to do with that at all. If the employer is going to pay the employee for his holiday, he or she is going to get that money, they are going to keep that money and be able to spend it. We went through all this last night.

I hope you go in opposition to the motion.

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Tuttle.

Mr. TUTTLE: Mr. Speaker, Men and Women of the House: I wasn't going to speak on this twice, but after listening to the gentleman's response on the other side of the aisle—it is always interesting, having been on the Labor Committee, that traditionally we have bills of this nature that come before us. They attempt to solve the problem by complicating the issue even further. I feel that this bill is a prime example of that.

Yesterday, I offered an amendment to this bill that would have struck a compromise for both sides. It was said that it would have watered it down and would have made the legislation ineffective. On the contrary, if the amendment were adopted, it would have addressed the issue of the double-dipping that the bill was supposed to have addressed. It would have deducted one fifth of that person's weekly unemployment benefit while allowing him holiday pay if that was negotiated in the contract prior to the layoff.

It has also been mentioned that if this bill passed in its present form, it may give an employer an option of paying less money for significant time worked. That is questionable, and I feel that most employers in the state could not or would not use it if the law were passed. So I felt that, assuming by the mood of this legislature to accept a change, without knowing the substance and the base, as this legislation does, some would say that every little bit helps and a piecemeal approach of this nature is needed, but I would respond in saying that it is because of the piecemeal approach that we are in the situation that we are in with the present unemployment fund.

As most of you are aware, there was a bill before us the other day, a bill sponsored by Mr. Swazey of Bucksport, that would have addressed the situation of benefits to the fund in the area of \$18.1 million. Unfortunately, neither side supported it and the bill died.

Assuming that bills of this nature will solve the problem, in my opinion, is ludicrous, and if you think the workers' compensation fund is in difficulty, wait until we come back here in the 111th Legislature, wait and see what this present unemployment fund looks like just because of bills like this. It fragments and dilutes the issue, and because of that, I hope you will indefinitely postpone this bill.

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

Miss LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to briefly remind everyone in this body that holiday pay is not mandated by law. It is a fringe benefit. However, when holiday pay is given, it is counted as wages for tax purposes. We are only asking fairness in the system, that it also be counted as wages for the purposes of the unemployment fund.

We have also pointed out that it is only fair to fellow employees who work that day and aren't laid off, that only to make fairness in the system, this should not be allowed to continue.

I do ask you to vote against indefinite postponement.

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

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I want to clarify one thing first. The amendment that the gentleman was talking about, it is as chairman of bills in the second reading, it is not a personal amendment.

The holiday pay is considered wages, but I

assure you, when the employer files for his income tax, the holiday pay is considered a bonus. There is a big difference. I don't think you get the same tax break on a bonus as you do on wages.

I also want to tell the House that if you insist on passing this, I assure you that the organized labor will work their way around it. I, for one, would say, before you ever lay off an employee, we will put in the contract that you pay him all his benefits coming to him before you lay him off. Therefore, we will just walk around it and the poor people that are not represented by labor will have to suffer for it.

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. All those desiring a roll call vote 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 Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, Ladies and Gentlemen of the House: I want to respond only to two comments from the gentleman from Sanford, Mr. Tuttle.

Number one, this bill does not fragment the existing law, it makes it consistent, it is as simple as that. If you work a holiday now and you are paid for it by an employer, it is deducted from your unemployment benefits. If you get paid for it by an employer, it is deducted from your unemployment benefits. If you get paid because of an agreement that you have with an employer that he will pay you for a holiday, it is not. The law is inconsistent. The gentleman from Madawaska is indicating to you that may happen. But even if it does, it isn't going to affect the bill either way.

The other comment that I recent somehow is that this bill is going to hurt the integrity of the unemployment fund. Quite the contrary. It should be obvious that if it saves money and it is consistent, it is not bills like this that make the unemployment fund and the laws surrounding it complicated. It is because we aren't consistent.

I would hope you would go against the motion to indefinitely postpone this bill.

The SPEAKER: The Chair recognizes the gentlewoman from Brunswick, Mrs. Martin.

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: You know how I have been employed as a waitress and worked in the mill and so forth, and I think it would be a great idea if we people here would vote to give these people a gift for the 4th of July and Christmas and Labor Day.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Sanford, Mr. Tuttle, that this Bill and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Baker, Beaulieu, Boisvert, Bordeaux, Brannigan, Brennerman, Brodeur, Carrier, Carroll, Chonko, Clark, Connolly, Cox, Davies, Diamond, G. W.; Diamond, J. N.; Erwin, Fitzgerald, Fowlie, Hall, Hayden, Hobbins, Joyce, Kane, Kany, Ketover, Kilcoyne, Laverriere, Lisnik, Locke, MacEachern, Macomber, Mahany, Martin, A.; McCollister, McHenry, McSweeney, Michaud, Mitchell, E. H.; Moholland, Nadeau, Norton, Paradis, P.; Paul, Pearson, Perry, Prescott, Rolde, Soule, Theriault, Thompson, Tuttle, Vose, The Speaker.

NAY—Aloupis, Armstrong, Austin, Bell, Benoit, Berube, Boyce, Brown, A.; Brown, D.; Brown, K. L.; Cahill, Callahan, Carter, Conary, Connors, Crowley, Curtis, Damren, Davis, Day, Dexter, Dillenback, Drinkwater, Dudley, Foster, Gavett, Gillis, Gowen, Gwadosky, Hanson, Hickey, Higgins, L. M.; Hollo-

way, Huber, Hunter, Hutchings, Ingraham, Jackson, Jordan, Kelleher, Kiesman, Lancaster, Lewis, Livesay, Lund, MacBride, Manning, Masterman, Masterton, Matthews, McGowan, McKean, McPherson, Michael, Murphy, Nelson, A.; Nelson, M.; O'Rourke, Paradis, E.; Perkins, Peterson, Post, Pouliot, Racine, Randall, Reeves, J.; Richard, Ridley, Roberts, Salsbury, Small, Smith, C. B.; Smith, C. W.; Soulas, Stevenson, Stover, Strout, Studley, Swazey, Tarbell, Telow, Treadwell, Twitcheil, Walker, Webster, Wentworth, Weymouth.

ABSENT—Cunningham, Higgins, H. C.; Jacques, Jalbert, LaPlante, Martin, H. C.; Mitchell, J.; Reeves, P.; Sherburne.

Yes, 54; No, 87; Absent, 9; Vacant, 1.

The SPEAKER: Fifty-four having voted in the affirmative and eighty-seven in the negative, with nine being absent, the motion does not prevail.

Mr. McHenry of Madawaska offered House Amendment "A" and moved its adoption.

House Amendment "A" (H-343) was read by the Clerk and adopted.

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

The SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, having voted on the prevailing side whereby this Bill was passed to be engrossed, I move we reconsider our action and hope you will vote against me.

The SPEAKER: The gentleman from Scarborough, Mr. Higgins, moves that we reconsider our action whereby this Bill was passed to be engrossed as amended. All those in favor will say yes, those opposed will say no.

A viva voce vote being taken, the motion did not prevail.

Amended Bills

Bill "An Act to Eliminate the Disincentive for Aid to Families with Dependent Children Recipients to Find Employment" (H. P. 947) (L. D. 1123) (C. "A" H-306)

Bill "An Act to Permit the Publication of the Names of Juveniles in Connection with Arrests and Court Appearances" (H. P. 742) (L. D. 880) (C. "A" H-300)

Were 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.

The following papers appearing on Supplement No. 1 were taken up out of order by unanimous consent:

Finally Passed Constitutional Amendment

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Amend the Law and Constitutional Provisions Relating to Consolidating Initiative and Referendum Elections to Dates of the Next General Election (H. P. 1112) (L. D. 1317) (C. "A" H-283)

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

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: Before we enact this constitutional amendment, I have been asked to speak to it. I remember that Representative Morton always used to ask that constitutional amendments be spoken to on the floor of the House so that people definitely will understand the seriousness of amending the Constitution. It was asked yesterday if I would explain this particular amendment.

Last session, we substantially changed our Constitution regarding the people's legislative power. We outlined a direct initiative and the people's veto and we consolidated the election date, something that everyone throughout the state, almost, seemed to be quite pleased with. But something had not come up and it is being addressed in this particular constitutional

amendment.

What we are doing, really, is to limit the time in which a signature is valid. In other words, under our constitutional language today, there could be a signature which was placed on a petition 20 or 30 years ago and that signature would still be valid unless we do amend the Constitution. So we basically have inserted language which would say the date each signature was made should be written next to the signature on the petition, and no signature older than one year from the written date on the petition shall be valid.

I hope that we do enact this constitutional amendment today.

THE SPEAKER: The Chair recognizes the gentleman from Scarborough, Mr. Higgins.

Mr. HIGGINS: Mr. Speaker, I would like to pose two questions, if I could, to the good chairwoman. Number one, are the dates going to have to be placed next to each individual signature, or is it going to be once it is filed at the clerk's office?

My second question is, how will this affect, if at all, the other constitutional amendment which we changed recently relative to having our referendum questions in a statewide municipal election? Will there be any problem time-wise in having those done within a year from the date?

THE SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: There will be no effect whatsoever on the other provisions that we changed in the Constitution regarding initiative and the people's veto. So, it will not affect dates whatsoever regarding statewide elections.

The date and the length of time will be directly related to individual signatures and will not be on the petition itself. As I mentioned earlier, the date each signature was made shall be written next to the signature on the petition, so it is that which would be invalid after a period of one year. For instance, if you had many signatures on a petition and some of them were less than one year old, they would not be invalid.

THE SPEAKER: The Chair recognizes the gentleman from Canton, Mr. McCollister.

Mr. MCCOLLISTER: Mr. Speaker, I would like to direct a question. How will this affect present petition drives? Signatures that have been taken for the last year and not yet presented?

THE SPEAKER: The gentleman from Canton, Mr. McCollister, has posed a question through the Chair to the gentlewoman from Waterville, Mrs. Kany, who may answer if she so desires.

The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, if this constitutional amendment is first adopted by us and then adopted by the voters next November, then, at that time, it would be going into effect.

THE SPEAKER: The pending question is on final passage. This being a Constitutional Amendment, a two-thirds vote of the House is necessary. All those in favor of this Resolution being finally passed will vote yes; those opposed will vote no.

A vote of the House was taken.

120 having voted in the affirmative and 3 having voted in the negative, the Resolution was finally passed, signed by the Speaker and sent to the Senate.

Passed to Be Enacted Emergency Measure

An Act to Regulate Motorized Bicycles (H. P. 906) (L. D. 1073) (C. "A" H-287)

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. 112 voted in favor of same and nine against, and ac-

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

Passed to Be Enacted

An Act to Make Changes in the Kennebec Water District Charter (S. P. 207) (L. D. 572) (H. "A" H-296 to C. "A" S-153)

An Act Promoting the Availability of Health Care Services (S. P. 303) (L. D. 847) (H. "A" H-263 to C. "A" S-105)

An Act to Provide a One Month Grace Period for Expired Motor Vehicle Registrations (S. P. 356) (L. D. 1031) (H. "A" H-298)

Were 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.

Failed of Enactment

An Act to Provide a Right-of-way to Pedestrians Against Drivers Entering Private Ways (S. P. 457) (L. D. 1305)

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

THE SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. McKean.

Mr. MCKEAN: Mr. Speaker, Ladies and Gentlemen of the House: So we won't make a mistake on this, first of all I am going to ask for a roll call on this matter. Second of all, I think we are getting ourselves into an area that we didn't mean to get ourselves into.

I know the other day we talked about an automobile stopped out in the roadway, which would be subject to a rear end accident. What we didn't think about was the longer type driveways where it's over one car length from the street to the sidewalk. I think you will find in that particular case, you are controlling the traffic operation of a vehicle on private property. I just don't think that we can legally do that.

Right now, you cannot legally cause a vehicle to even be registered if it is only on private property. Once that vehicle comes off that street, it is then on private property.

This is a problem, but I think the biggest problem I have with this bill is that I am not sure what a 'sidewalk' is. If you will take a look at the bill, and this is engrossed and ready for enactment, it is spelled 'sidewalk'. Seeing as how I am not sure what a sidewalk is, I don't think we want to put this thing out to the public. It is a bad bill.

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. All those desiring a roll call vote 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 pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Brodeur, Carroll, Clark, Cox, Day, Diamond, G. W., Fitzgerald, Fowlie, Hayden, Hickey, Hobbins, Jackson, Kany, Kilcoyne, McPherson, Mitchell, E. H., Nelson, M., Post, Soule, Twitchell, Walker.

NAY—Aloupis, Armstrong, Austin, Baker, Beaulieu, Bell, Benoit, Berube, Boisvert, Bordeaux, Boyce, Brannigan, Brenerman, Brown, A., Brown, D., Brown, K. L., Cahill, Callahan, Carrier, Carter, Chonko, Conary, Connors, Crowley, Curtis, Davies, Davis, Dexter, Diamond, J. N., Dillenback, Drinkwater, Dudley, Erwin, Foster, Gavett, Gowen, Gwadosky, Hall, Hanson, Higgins, L. M., Holloway, Huber, Hunter, Hutchings, Ingraham, Jordan, Joyce, Kelleher, Ketover, Kiesman, Lancaster, Lewis, Lisnik, Livesay, Locke, Lund, MacBride, MacEachern, Macomber, Mahany, Martin, A., Masterman, Masterton, Matthews, McCollister, McGowan, McHenry, McKean,

McSweeney, Michael, Michaud, Moholland, Murphy, Nadeau, Nelson, A., Norton, O'Rourke, Paradis, E., Paradis, P., Paul, Pearson, Perkins, Perry, Peterson, Pouliot, Prescott, Racine, Randall, Reeves, J., Ridley, Roberts, Salsbury, Small, Smith, C. B., Smith, C. W., Soulas, Stevenson, Stover, Strout, Studley, Swazey, Tarbell, Telow, Theriault, Thompson, Treadwell, Tuttle, Webster, Wentworth.

ABSENT—Connolly, Cunningham, Damren, Gillis, Higgins, H. C., Jacques, Jalbert, Kane, LaPlante, Laverriere, Manning, Martin, H. C., Mitchell, J., Reeves, P., Richard, Rolde, Sherburne, Vose, The Speaker.

Yes, 21; No, 109; Absent, 20; Vacant, 1.

THE SPEAKER: Twenty-one having voted in the affirmative and one hundred nine in the negative, with twenty being absent, the motion does not prevail.

The Chair recognizes the gentleman from Limestone, Mr. McKean.

Mr. MCKEAN: Mr. Speaker, I would move reconsideration and hope you all vote against me.

THE SPEAKER: The gentleman from Limestone, Mr. McKean, moves that the House reconsider its action whereby this bill failed of passage to be enacted. All those in favor will say yes; those opposed will say no.

A viva voce vote being taken, the motion did not prevail.

Sent to the Senate.

An Act to Repeal the Double Affirmation Rule Under the Employment Security Law. (H. P. 411) (L. D. 450)

An Act to Change Reimbursement to a Municipality for General Assistance Costs. (H. P. 701) (L. D. 826) (C. "A" H-246)

An Act Relating to Injured State Workers. (H. P. 765) (L. D. 902)

An Act to Limit Liability Regarding Donations to Food Banks. (H. P. 1010) (L. D. 1206) (C. "A" H-278)

An Act to Enable Continuation of the Highway Safety Defense Driver Program through an Increase in Student Registration Fees. (H. P. 1353) (L. D. 1539)

Were 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.

The following papers appearing on Supplement No. 2 were taken up out of order by unanimous consent:

Leave to Withdraw

Report of the Committee on Education reporting "Leave to Withdraw" on Bill "An Act Repealing Formulas for Adjusting Below and Above Average Per Pupil Operating Costs used in Computing the State-local Allocation" (S. P. 59) (L. D. 85)

Came from the Senate with the Report read and accepted.

In the House, the Report was read and accepted in concurrence.

Non-Concurrent Matter

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide Counties, which have Adopted a Charter, with Home Rule Authority Regarding the Office of Sheriff (H. P. 357) (L. D. 405) on which Majority "Ought to Pass" as amended by Committee Amendment "A" (H-260) Report of the Committee on State Government was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-260) in the House on May 5, 1981.

Came from the Senate with the Minority "Ought Not to Pass" Report of the Committee on State Government read and accepted in non-concurrence.

In the House: The House voted to recede and concur.

The following papers appearing on Supple-