

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME IV

FIRST REGULAR SESSION

Senate

May 2, 1995 to June 16, 1995

HOUSE REPORTS from the Committee on **TAXATION** on Bill "An Act to Increase the Property Tax Exemption for Farm Machinery"

H.P. 17 L.D. 11

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-242). (10 members)

Minority - Ought Not to Pass. (3 members)

Tabled - June 13, 1995, by Senator **AMERO** of Cumberland.

Pending - **ACCEPTANCE OF EITHER REPORT.**

(In House, May 18, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-242).**)

(In Senate, May 23, 1995, Reports **READ.**)

On motion by Senator **AMERO** of Cumberland, Tabled 1 Legislative Day, pending **ACCEPTANCE** of Either Report.

The Chair laid before the Senate the second Tabled and Today Assigned matter:

Bill "An Act to Amend the Laws Governing HIV Testing at the Request of Victims of Sexual Assault"
H.P. 589 L.D. 799
(C "A" H-299)

Tabled - June 13, 1995, by Senator **LAWRENCE** of York.

Pending - the motion by Senator **AMERO** of Cumberland to **INSIST.**

(In Senate, May 31, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-299)**, in concurrence.)

(In House, June 7, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-299) AS AMENDED BY HOUSE AMENDMENT "A" (H-393)**, thereto, in **NON-CONCURRENCE.**)

On motion by Senator **AMERO** of Cumberland, the Senate **INSISTED.**

The Chair laid before the Senate the third Tabled and Today Assigned matter:

HOUSE REPORTS from the Committee on **JUDICIARY** on Bill "An Act to Allow Physician Assisted Deaths with Dignity for Terminally Ill Persons in Maine"
H.P. 552 L.D. 748

Report A - Ought to Pass as Amended by Committee Amendment "A" (H-411). (5 members)

Report B - Ought Not to Pass. (5 members)

Report C - Ought to Pass as Amended by Committee Amendment "B" (H-412). (3 members)

Tabled - June 13, 1995, by Senator **KIEFFER** of Aroostook.

Pending - **ACCEPTANCE OF A REPORT.**

(In House, June 13, 1995, Bill and Accompanying Papers **INDEFINITELY POSTPONED.**)

(In Senate, June 13, 1995, Reports **READ.**)

Senator **FAIRCLOTH** of Penobscot moved that the Senate **ACCEPT** Report "A" - **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-411)** in **NON-CONCURRENCE.**

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

Senator **FAIRCLOTH:** Thank you Mr. President, Colleagues of the Senate. I would like to preface my remarks by noting that I am not a sponsor of this bill. I am not an enthusiast of so-called physician assisted suicide. It's not something that I would have thought of sponsoring or bringing before this body at all. I'm not a member of the Hemlock Society. It's not something that even crossed my mind, as a member of this Legislature. The reason that I signed on to Committee Report "A", and the reason I hope this body will not reject this matter outright, is because I had to, as a member of the Judiciary Committee, listen, take a few minutes to listen to some very moving testimony. Committee Report "A" simply provides for a task force. It does not pass legislation to create decision-making for the terminally ill at this point. It simply provides for a task force to study that issue. I want to explain, from the testimony of these constituents, why I think that is something that you ought to consider.

A woman testified before the Judiciary Committee. A very attractive, both physically and in terms of her personality, she was a very attractive person. She suffers from Lou Gehrig's Disease, and she is about my age. She realizes that her time on this earth may be quite limited. She is not morose, she is entirely dignified and appropriate about her situation, but she argues, eloquently, that she wants to make that kind of decision on her own, without the

government telling her what to do. This concept involves people who are in the last six months of life, as certified by two physicians, and then further certified by a psychiatrist to be competent to make such a decision. Somebody suggested to me the other day that this woman could shoot herself, or she could drive off a cliff. This dignified, decent, kind woman doesn't want to shoot herself or drive off a cliff. She is a good, decent person, who is faced with a very tough situation and her question to me is, "Why are you, the politician, why are you, the government, telling me what to do in this very difficult situation?"

A second person who testified to the Committee is familiar to some of you. That was the former Representative Sophia Pfeiffer, who is not suffering from a terminal illness, but is a person who is one of the softest people I have known in the legislature. Representative Pfeiffer has faced several cancer operations. She has overcome them all and right now she is healthy and doing fine. She says, again, as someone with a long life experience, far longer than mine, "Who are you, Mr. Politician, who is this healthy, arrogant thirty-five or forty-year-old telling me what to do in that situation?" She wants to make the decision on her own.

Third, I had a constituent, a man whose father was suffering from a terminal illness, who was very oversome by the emotion that his father wanted to make that choice, could not make that choice, and felt that he was cheated because of the pain that they suffered and the pain that he went through. So, all Committee Report "A" suggests is that we listen to these people, that we give them some opportunity to address this issue. The Judiciary Committee did an excellent job modifying Representative Richardson's proposal, but our Committee doesn't have any people who are senior citizens, it doesn't have people, as far as I know, there are not enough people who are involved who had family members who died of long terminal illnesses, their spouses or children. I think we need to have those people participate and that's all that this Committee Report provides for, that those people participate in this decision. That's all. That you have nurses who are very involved in these end of life decisions participate in the decision. I hope you will consider how it would affect you. Would you want to maybe consider whether, and that's all we are talking about here, maybe consider whether you might want to be able to make that decision on your own, without the government controlling that decision for you. So, again, I do not favor Representative Richardson's proposal, but what I do favor is looking at it in greater detail with the people who are most directly affected. I think that's decent, it's kind-hearted, and the task force does not pre-suppose a result, it specifically states that one possible result of the task force report would be to do nothing at all. I think we ought to give it a fair amount of consideration out of respect for people like this brave woman with Lou Gehrig's Disease, and like former Representative Pfeiffer, and my constituent, who face very tough situations.

Physician assisted suicide occurs now in the State of Maine. They do it surreptitiously, by

doctors providing extra amounts of morphine. Maybe, perhaps, we should consider a mechanism, after a long judicious study through a task force, about how to deal with it more appropriately, legally and justly, as this woman with Lou Gehrig's Disease, and former Representative Pfeiffer suggested. That's all Committee Report "A" would provide and I thank the members of the Senate for at least listening. Thank you.

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

Senator **PENDEXTER:** Thank you Mr. President, Men and Women of the Senate. I rise to oppose the motion on the floor, only because I feel that we do know where we stand on this issue. You either agree or you disagree. Another study to look at this issue, I think, is not necessary. While I'm on my feet, I guess I would just say one thing, and that is, as things stand now patients do have a right to make medical decisions about their care and their treatment. You know, the right to make medical decisions includes the right to refuse treatment that is necessary to sustain life. Each adult has two types of avenues they can use, one of which is a living will, and the other is durable powers of attorney. A vote on euthanasia, I think, is a yes and no vote, so I would ask the members of the body to not support this study, because I think it's time to take a stand on the issue. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President, Colleagues of the Senate. I am relieved that this vote today is giving us a chance to discuss the issue further. I think that mortality is an issue that none of us like to address. As a lawyer, the area of most procrastination among my clients is in their wills. I won't hear from them for a year after they have decided they want to do it. It's a tough issue. We don't want to address it. I'm relieved that we don't have to decide on the actual value of voting for death with dignity here. I had a father who didn't want to die and he was fighting the obvious for the last eight months when he was only supposed to live two, he kept fighting. He had an expression, "my strengths are my weaknesses", and that fight was his strength. To some, maybe at some point, that fight was a weakness. I have a dog that if it was about to die, I think that would be the kindest gesture I could do. I have friends who tell me to vote for the death with dignity act. I don't know where I stand. I do know that it's an important issue that we have to address and I'm happy to vote for the task study.

On the point of living will and durable power of attorney, for that to kick in you have to be in a permanent vegetative state. That's different, in my eyes, than somebody who is thirty-five and very aware of what is going on and not at that permanent vegetative state. So, for those reasons, I am happy to vote for this study. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS**: Thank you Mr. President, Members of the Senate. I don't think that this is one of those issues where any one of us can stand up and try to convince you to vote one way or the other. It's just something that you feel inside that you should vote for or against. But, I will share with you some of my own reflections, having sat through hours of public hearings on this issue. I came to the legislature with my mind totally unresolved on this issue. I came down, finally, in favor of passing the bill, for these reasons. One of them is that the public seems to have accepted this idea on a very broad front basis. Many of us sent out questionnaires and invited the public to respond on this rather sensitive issue. Most of us have received overwhelmingly favorable responses, along the order of 70% to 80% of those people responding have endorsed the idea that there should be such legislation. I think that reflects, accurately, the tenor of our public hearing on the issue. The second thing is that most doctors will tell you privately, or some of them not so privately, that this is going on now. If a person wants to end his life in some discreet way it can be made to happen. Doctors participate in some passive, and some not so passive, ways.

I think that the medical profession is a little concerned about the statute because it set up procedures to formalize this process, and if they had a reservation about the statute, their reservation was that right now we don't have these procedures, don't bother us. Maybe we should leave it sort of under the table and just let things slide along as they are until society comes around to accepting the notion more broadly, perhaps, than they have. My own concern is that if this practice, which I gather is widespread, continues without formal legislative action that at some point, some person in some party or interest, some relative perhaps of the person who has died, might make complaint about the doctor or the hospital or the nurse who may have participated in some such process. Our law behaves in a very clumsy way when it deals with this situation. It prosecutes for murder, which is not exactly what I think people would have in mind as the appropriate remedy for this kind of conduct. What I'm saying is that I think that there are many medical professional people who are walking a very thin line right now, between doing what they, in their own consciences may believe is right, but at the same time running a risk of having our criminal law come down on them in a very heavy-handed and unexpected way, maybe from an unexpected quarter. For that reason, I felt that some type of legislation was appropriate. That's why I signed on to the bill. The task force is also highly appropriate in my view, but my own reaction to it was that we have a task force of one hundred and eighty six people in this building who come from many walks of life. Most of us have some notion of how we would like to vote on this issue anyway. I would be content to pass the bill and see how it works and study it as it goes, however, having said that, I am also quite content to have a task force report back in the next session, which is what Senator Faircloth's, from Penobscot, proposal does. Thank you.

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

Senator **McCORMICK**: Thank you Mr. President, Men and Women of the Senate. I rise to support the majority report as well. I do it for the following reasons. One, I have received the most thoughtful letter from Reverend Tollander, who is the Chaplain at Togus, raising very good questions about the bill as printed. The definition of terminal he wonders about, the definition of determination of mental competency. I think those points deserve more thought, longer thought maybe than we can give here. On the other hand, I, too, have to look at this from a very personal point of view, and that is that a very close member of my family asked me if she were in complete and utter pain from her terminal illness would I help her die? I had to tell her, that because I was an elected member of the legislature and sworn to uphold the laws of Maine, that I could not. That was an untenable position for me to be in, to have to choose the laws of a government over the needs of my immediate family. I don't think we should be putting Maine citizens in that position, especially on an issue that is as important and personal as this one. The proposal we have before us today that the good Senator from Penobscot, Senator Faircloth, has moved is a modest proposal and I believe we should support it. Thank you.

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

Senator **FAIRCLOTH**: Thank you Mr. President. I just want to provide a couple brief points of legal information that I think might be a little bit helpful. The Karen Ann Quinlan case, that people recall from about 1976, in New Jersey, involved this issue of persistent vegetative state that most of us remember. One of the interesting distinctions about that is that Karen Ann Quinlan doesn't get to decide if she can live for a long time. Karen Ann Quinlan doesn't get to decide, someone else decides for her and she could live for quite a long time. With the situation we are talking about here, two physicians certify the person has less than six months to live and I would note, just for the good Senator from Kennebec, Senator McCormick, that in the amended version of Representative Richardson's proposal, it is very strict in making sure that unless you have got those two physician certifications, plus the psychologist certifying competence, nothing goes forward. I talked with a number of physicians who made clear that, as a practical matter, what would happen is that unless a person had only a few weeks to live, no doctor would certify less than six months. So we are really talking about people who only have a few weeks to live or no doctor is going to take that step. It's a very conservative, restricted approach, even in Representative Richardson's approach to the legislation. It's an odd position when you consider that now, under current law, people can do things which can lead to the death of a person who could live for quite some time. By contrast, that very person cannot make the decision when their life is going to be ending in a few weeks to decide if they want to choose their own exit. Also, on a legal note, there was a famous case of a doctor, Timothy Quill, in Rochester, New York who had a long-time relationship, as a family physician, with a young mother who came down with terminal cancer. She chose to say her good-byes to

her family in her own way, and after a long discussion with him, he helped her to end her life as she chose. He was brought up for indictment in that county in New York, because it is a violation of the law, as the good Senator from Somerset, Senator Mills, suggested, even though doctors do this now surreptitiously, it is potentially a violation of the criminal law. In that case the Grand Jury chose not to indict, even though I think based upon a strict reading of the statute, they probably should have. That's an odd thing, to prevent this young mother from making her own decision and saying good-bye to her family in her own way.

As to the task force proposal, people say you can't change your mind on this. Yes you can. I came in opposing this legislation. The reason I changed my mind is because I talked to a lot of people who are directly affected. What this task force proposes is having a lot of people who are directly involved, directly affected, consider the issue. I think that affects people. It affected me because I was opposed to the whole thing from the start, until I listened to people who are directly affected. That's what this report is about. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I don't want to minimize anybody's feelings on this bill, because it is a very, very personal bill. Unfortunately, what the law is in a negative position for those people who might want to access what this bill allows us to access. It did hit me personally, as it has hit others in this chamber. I'm a 59-year-old woman right now. My mother, when she was 58, lay in a hospital bed for 92 days. All of us knew, the physicians, the surgeon, everybody knew that there was absolutely no way that woman was going to live. She could die with the tubes in her, she could die on the operating table. The surgeon said this to me directly, so I know, or she could be terminated. In any case she was going to die. I brought that, as the dutiful daughter, to the rest of my family, and as you can imagine, there are sixteen children in that family, it was not an easy thing to do. They chose not to do anything but to keep the tubes in. She came out of her coma for a couple of days. You all know me, so you can well imagine that I got some of those genes from my mother. I can't imagine that that woman, my dear sweet mother, would have wanted to lay on that hospital bed for 92 days, I can't imagine that, but she didn't have the opportunity to make any other election. We had to make it for her. Because I wanted to pull the tubes out I was called the black sheep of the family for about ten years. They don't forgive easily. Had she been able to make that election, she could have made it and they would have had to follow it. This bill may or may not have been able to affect her, depending on what her state was or anything else, but the fact of the matter is that she did lie there for 92 days.

My oldest sister and I looked at each other when she died and said almost simultaneously, "You have got to make me a promise. If I ever reach that point, please slip me a mickey." We both promised each other that we would, whether we will do that or

not I don't know. We are both above the age of 58 now, but that's how personal I know it gets. I would support the bill being put in place now, but I am supporting the resolve if that is the only thing that we can get. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President, Ladies and Gentlemen of the Senate. These debates are always difficult because they infringe on the most intimate moments of our lives. I'm afraid that sometimes that fact tends to cloud the issue. It's my sense that I will oppose the motion on the floor because it seems to me that the debate is taking place where it belongs, and the study is taking place where it belongs, and that is in our society at large. It does not seem to me to be particularly appropriate for government to attempt to convene a study of this nature when it is already going on in the community. The issues are difficult to understand, and many times are difficult to discuss. Cases where there is a family member and there is a debate about life support are frequently resolved by discussion among the family, and in a family where there is unanimous agreement among children of a parent who is ill, then the type of life support plan that is created is generally one to which both the physician and the family members agree. It's really only when the family members disagree that there are problems with that. So, with all sympathy to Senator Bustin for her family's situation, it nevertheless remains that if the family can agree on what the plan should be, there is usually no difficulty in executing that plan at the hospital level. It's only when the request is for some action that is not withdrawing life support, but has to do with administering lethal doses of medication, where things begin to get cloudy. So, I would submit that the best place to leave this debate is in the public forum in which it is taking place now, and that when the public and the State of Maine, or elsewhere, arrives at the point where they are comfortable with the decision, I believe it will then come to us in a form that will pass easily in this body and we don't need to try to steer that debate. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. I shall be opposing a further study of the issue, and I want to share with you the survey that I sent out earlier in the session on this question, whether my constituents were in favor of legalizing physician assisted suicide for terminally ill people. My constituents don't want a study, 71% said they favor such legislation. I think I agree with others who have spoken before me this morning that the issue is well known by our constituents, we don't need to study it further. In this regard, my constituents favor enactment of such legislation as this. Thank you.

On motion by Senator **CAREY** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **FAIRCLOTH** of Penobscot that the Senate **ACCEPT** Report "A" - **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-411)** in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **ABROMSON, BUSTIN, CIANCHETTE, CLEVELAND, FAIRCLOTH, LONGLEY, LORD, McCORMICK, MILLS, RUHLIN**

NAYS: Senators: **AMERO, BEGLEY, BENOIT, BERUBE, CAREY, CARPENTER, CASSIDY, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, KIEFFER, LAWRENCE, MICHAUD, O'DEA, PARADIS, PENDEXTER, PINGREE, RAND, SMALL, STEVENS, and the PRESIDENT, Senator BUTLAND**

ABSENT: Senator: **ESTY**

10 Senators having voted in the affirmative and 24 Senators having voted in the negative, with 1 Senator being absent, the motion of Senator **FAIRCLOTH** of Penobscot to **ACCEPT** Report "A" - **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-411)** in **NON-CONCURRENCE, FAILED**.

On motion by Senator **PENDEXTER** of Cumberland, the Senate **ACCEPTED** Report "B" - **OUGHT NOT TO PASS**.

The Chair laid before the Senate the fourth Tabled and Today Assigned matter:

SENATE REPORTS from the Committee on **STATE AND LOCAL GOVERNMENT** on Resolve, Establishing the Maine Council on Privatization (EMERGENCY)

S.P. 81 L.D. 169

Report A - **Ought to Pass as Amended by Committee Amendment "A" (S-254)**. (6 members)

Report B - **Ought Not to Pass**. (6 members)

Tabled - June 13, 1995, by Senator **KIEFFER** of Aroostook.

Pending - **ACCEPTANCE OF EITHER REPORT**.

(In Senate, June 13, 1995, Reports **READ**.)

Senator **KIEFFER** of Aroostook moved that the Senate **ACCEPT** Report "A" - **OUGHT TO PASS AS AMENDED**.

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

Senator **KIEFFER:** Thank you, Mr. President, Ladies and Gentlemen of the Senate. This is legislation which I introduced last January. Generally speaking, I am opposed to additional studies and further studies, but in this particular case it is something that I had researched for a period of two years. I have tried to establish what has worked in states like Kansas, Michigan, Florida, and New Jersey. I have compiled a group of reports that were a foot high. Generally, when studies regarding departments in the interest of checking their efficiency, or inefficiency, or privatization or whatever you want to call it, they are very narrowly focused. They are instituted by a legislator that has perhaps an ax to grind about the operation of the department and how it affected him or a constituent or something in that fashion that was very narrowly focused. My intent in this particular piece of legislation is not partisan. It was designed to not only take a hard look at all of the segments of state government, from an efficiency standpoint, it is also designed to take a look and reward departments of state government that do operate in a very efficient and effective way, and perhaps even set up an award system to employees that do operate and could be held up as an example to other segments of government in the efficiency with which they do operate. It would also be the intent to single out departments that do not operate in such an efficient manner, and see if there isn't some way, by improving their efficiency, or making them competitive with the private sector by looking at the pros and cons of privatization of either the department or segments of the department, to see if there isn't a more efficient and effective way to make state government operate.

Since the bill was introduced, the Governor, through his budget process, has initiated his Productivity Task Force, which does some of the same things that the bill which I introduced are designed to do. However, I think there is a distinct difference in some parts of the two proposals. I believe his is more oriented to the short term, to the immediate biennium coming up, as he must reduce by some \$42 million the expenditures of state government in the very near term. I believe the legislation which I introduced is longer term than that. I believe we can be looking at a five-year proposal as I believe should be done in state government, as we should have a longer range plan in place to make state government more efficient and more effective over the long period of time. The amendment that has been added to this bill does, in fact, change the title of the bill. It now reads, Resolve, Establishing the Maine Council on Competitiveness. It also adds a fiscal note of some \$2,900 to the bill to pay the expenses of the people serving on this council. It also removes the emergency preamble in the bill.