

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

1975

KENNEBEC JOURNAL
AUGUSTA, MAINE

Which reports were Read and Accepted in concurrence.

Ought to Pass

The Committee on Taxation on, Bill, "An Act to Exempt Nonprofit Health Care Corporations from Sales Tax on Medical Supplies and Equipment Donated to Patients." (H. P. 74) (L. D. 86)

Reported that the same Ought to Pass.

The Committee on Taxation on, Bill, "An Act to Simplify the Computation of Tree Growth Reimbursement." (H. P. 244) (L. D. 298)

Reported that the same Ought to Pass.

The Committee on Taxation on, Resolve, Authorizing the State Director of Property Taxation to Convey by Sale the Interest of the State in Certain Lands in the Unorganized Territory. (H. P. 241) (L. D. 296)

Reported that the same Ought to Pass.

Come from the House, the Bills and Resolve Passed to be Engrossed.

Which reports were Read and Accepted in concurrence, the Bills and Resolve Read Once and Tomorrow Assigned for Second Reading.

Ought to Pass - As Amended

The Committee on State Government on, Resolve, Confirming the Transfer of Certain Lands from the Department of Mental Health and Corrections to the Department of Conservation, Bureau of Public Lands. (H. P. 843) (L. D. 1028)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-157).

Comes from the House, the Resolve Passed to be Engrossed as Amended by Committee Amendment "A".

Which report was Read and Accepted in concurrence and the Resolve Read Once. Committee Amendment "A" was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, this bill establishes a whole new procedure for handling certain lands which are surplus to our current use, public lands, in the built-up areas of the state. Might I inquire through the Chair of anyone from the Committee as to some general statements on how these lands will now be managed?

The PRESIDENT: The Senator from Kennebec, Senator Katz, now poses a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President and Members of the Senate: At the public hearing, the Director of the Bureau of Public Lands testified before us, Mr. Barringer, and he explained to us, as well as representatives from the various state agencies which would be in a way losing control of those lands, that some of the extra land around state institutions is not used by the state institutions, particularly by the Department of Mental Health and Corrections, and it would be more appropriate if the Bureau of Public Lands were able to establish a standard set policy for all of the lands under its jurisdiction, in the hopes that some of these lands could be returned to common management for farming, for multiple use for the forestry areas, so the lands could be productive.

There would be no loss to the state of any lands. There might be some slight increase in revenues from the sale of products which would be grown on the lands.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President, I would

ask a question through the Chair of anyone who wishes to answer, as to whether this gives the Bureau of Public Lands the right to sell any of these lands to private individuals.

The PRESIDENT: The Senator from York, Senator Hichens, has posed a question through the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President and Members of the Senate: I am very pleased that question was asked, because it is the same question that the State Government Committee asked, and we went into some depth in trying to arrive at an answer. We are certain that we arrived at a definite answer that there is no sale permitted and that there is no authority for an easement of any permanency beyond, I believe, one year for use of those lands in any way that can be transmitted or conveyed by the Bureau of Public Lands by itself without prior legislative approval.

Mr. President, I would like to point out to the Senators that we had a slight difference of opinion with some of the people who administer the Bureau of Public Lands, and I am certain now that we have rectified that question as a result of what I have just mentioned, that the legislature has once again restated its intent and prerogatives, and I am thoroughly convinced that nobody is going to try to transmit any of those lands without our prior approval.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Committee Amendment "A"?

Thereupon, Committee Amendment "A" was Adopted in concurrence and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Ought to Pass in New Draft

The Committee on Human Resources on, Bill, "An Act Relating to Mandatory Reporting of Child Abuse or Neglect." (H. P. 153) (L. D. 201)

Reported that the same Ought to Pass in New Draft under Same Title (H. P. 1488) (L. D. 1680).

Comes from the House, the Bill in New Draft Passed to be Engrossed as Amended by House Amendment "A" (H-161).

Which report was Read and Accepted in concurrence and the Bill in New Draft Read Once. House Amendment "A" was Read.

Mr. Berry of Androscoggin then moved that House Amendment "A" be Indefinitely Postponed.

The PRESIDENT: The Senator has the floor.

Mr. BERRY: Mr. President and Members of the Senate: This amendment replaces the word "believe" with the word "suspect", and I would offer a short argument along with a letter from the Federal Health and Welfare, which is signed by Mr. Rheable Edwards, Assistant Regional Director of Human Development, and that is that the word "suspect", in their definition, is to imagine one guilty without proof. I would rest my argument.

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

Mr. CONLEY: Mr. President, I rise to oppose the motion of the Senator from Androscoggin, Senator Berry, because I believe that the amendment is a correct amendment and it should stay on the bill.

I think one of the most important

commodities within this state is the children of Maine citizens, and also, being a parent of twelve of them, I know a great deal about them, although that probably has no relation to this particular amendment. But I do believe that in some of the dealings and workings that I have had, both as a municipal officer and also working in some social service areas, that I have seen tremendous abuse done to some of our young children in this state. And I don't think there is any more horrendous crime than to see some poor defenseless youngster, unable to defend himself, and many times unable to even speak for himself, be abused.

I know in the area of day care centers that sometimes children are brought to these centers, and there is a suspicion that always arises in the minds of some of those who are authorized to administer these programs, and sometimes there is a great deal of sadness in their hearts, because of the conditions that existed with some of the children that have been brought there. And I think that this amendment being attached to the bill would give us the sole satisfaction to know that at least with this one word change we could all sleep very comfortably, at least knowing that if we were suspect of this that it could be reported and someone would look into it.

So I hope the Senate would adopt House Amendment "A", and I would ask for a roll call.

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

Mr. BERRY: Mr. President, I have just been handed a short paraphrase here that I would like to read to the Senate. "There is a chance that the question of legislation interpretation can be raised, which could have been easily avoided. It is, therefore, our recommendation that the legislature not amend the word "suspect" to replace it with the word "believe".

I agree with the Senator from Cumberland, Senator Conley, as to the fact that our primary interest is in the welfare of the children of the State of Maine, but I don't think that the word "suspect", as interpreted by the Department of Health and Welfare on the federal level, is what we are really looking for. This would mean that if my child, for instance, fell down and had a black eye, and one of my neighbors perhaps of which I wasn't his fondest neighbor could throw a lot of undue accusations just for the reason that he suspects. I just don't think that this is a proper wording that is going to bring about any better protection for the child or his rights, and I think we really should insist that the word "believe" remain in this piece of legislation.

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

Mr. PRAY: Mr. President and Members of the Senate: I would like to point out that you should have received a letter this morning of an opinion from the Attorney General, Joseph Brennan, and I would like to just read part of that, starting with paragraph 2:

"As was stated in a letter dated March 5, we recommended that the legislature retain the word 'suspect', rather than replace it by an amendment with the word 'believe'. Our reasons for that are as follows: Federal legislation on this subject utilizes the language 'known or suspected'. The word 'suspect' has been interpreted by the courts as having more meaning than merely somebody's imagination."

Now, I will go over to the third one on the second page. "We understand the Federal Government ruled April 14, 1975 that 22 M.R.S.A. subsection 3853, line 5, had to be amended by deleting 'believes' and replaced with the term 'suspect'. This bill amending that law would produce the same results.

"For the three reasons given above, we continue to recommend that the legislature utilize the word 'suspect' in L. D. 201."

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, it is not generally known, but I am also chairman of another committee besides Education, and this is it. This is a bill I was looking forward to for a long time. I have been involved in it for several years. It came actually to me out of the Education Commission of the States.

When the bill surfaced it was in a horrible condition. For example, the original bill which the committee dealt with said, in effect, that if you were a physician and if you failed to report your suspicions of child abuse, and subsequently the child were injured by further abuse, that you would be subject to civil suit for damages for the tragedy which occurred to the child subsequently. This was the proposal put forward by the proponents originally. And the job of the committee was to try to enact emergency legislation in a timely manner that was reasonable legislation that would reasonably accomplish that which is the responsibility we have in front of us.

Now, we have got into the question of semantics, and I really, really don't give a darn about the semantics of "believe" and "suspect". When a kid is beaten up, it should be obvious that the kid has been abused. But the feds started getting into the act. First we got a letter from the regional office in Boston saying they preferred "suspect", but very clearly indicating that they did not demand "suspect". Then we got a telegram and another letter from the feds. I understand that in the press there is a feeling that this is an issue between the lobby and the Maine Legislature. I would suggest to you that the issue is between a couple of bureaucrats sitting behind desks anonymously in Boston trying to tell Maine what to do.

Now, as Chairman of Education, I have been trying to get word out of the feds for four years on a single question of the federally impacted area for education, and at the moment we still don't know what they expect of us. And I suspect it is going to be a long time before we find out.

I guess what I am saying here today is, you know, a pox on both of these questions. My motivation as Chairman is to get progressive legislation on the books that will reasonably improve our posture to deal with child abuse. This is emergency legislation. And in the process of not accepting the amendment the House has put on, the committee said — and it was a divided opinion within the committee — that we had to recognize sincere differences of opinion, particularly in the medical profession, as to what the ultimate criminal actions against physicians might be. You can take all the shadows away from it, and that is the issue here.

For that reason, I am going to vote for the indefinite postponement of this amendment, and hope that this legislature independently can enact emergency

legislation. And I suspect and believe that either posture, without regard to this plethora of letters from regional offices and telegrams, I suspect that we probably will be in compliance, if they ever do take definitive action.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: The good Senator from Kennebec, Senator Katz, has partially answered a question I was about to ask, and that is whether or not anyone has actually received a definitive ruling from the Federal Government as to the requirement of the word "Believe" or the word "suspect" in this act in order to be eligible for the federal funds that are apparently available for this purpose.

We have on our desks this morning, which was distributed sometime earlier, a sheet of paper that is not signed. There is not even an indication as to the Senator that desired to have this paper distributed, which I understand is a part of the rules of this body. This sheet of paper stated that the Federal Government ruled that the word "believe" has to be changed to "suspect", that this is necessary. Now, someone — and I say someone because this is not signed, nor has it been indicated pursuant to whose request this has been distributed — someone is telling this body that they have to change the word "believe" to the word "suspect", and I object very strenuously to sitting here and being told anonymously what we have to do. I have seen no indication, I have seen no letter, and no one has told me there is such a letter, that the Federal Government has given to anyone in the State of Maine stating definitely that unless the word "believe" is changed to the word "suspect" all of the funds will be cut off. If there is such a letter, or if anyone knows of such a letter, I hope that he will surface.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, as I indicated, I do have a copy of a telegram here from the regional office in Boston, which telegram was received by telephone from a Neal Fallon in HEW in Boston, indicating that the use of "suspect" would jeopardize our funding, and I have that in writing. The thrust of my remarks is, you know, good luck. Here is a man sitting in Boston with sixteen bosses, all of whom have review power over his decisions, and I just don't feel that if Maine passes the law in its committee form, which is an excellent law, that the feds are going to do anything but agree that we have moved into compliance with federal law.

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

Mr. CONLEY: Mr. President, I am not really concerned about any letter from a Mr. Fallon in Boston. I could care less. I could care less about the lobbyist who has been lobbying this bill to get the word struck out, of which we are well aware. I personally consider, as a member of this Senate, that the word "suspect" is the most important word within the bill, and if we are going to protect Maine children, then the amendment should be adopted.

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

Mr. COLLINS: Mr. President and Members of the Senate: I am a latecomer to this controversy, having only last night been asked to look at these words.

As I studied the bill, I was disturbed by

two things. The first is that the bill contains a penalty provision, a fine of up to 1,000 or imprisonment for not more than six months, so that it becomes an act with criminal implications. At the same time it includes a section entitled "Immunity from Liability", which says that anyone that reports these suspicions becomes immune from both criminal and civil liability. You can see immediately how the immunity section may cause busybodies to stir up trouble.

On the other hand, I am very much in favor of greater reporting of child abuse situations than exist today. So you can see that I am rather torn between two arguments here.

As I try to resolve this in my own mind, I see the basic problem between the word "believe" and the word "suspect" as being a public relations problem, an education problem, among our professionals, particularly our doctors and our educators. We know that there is growing gun shyness, as I call it, among professionals who get sued for trying to do their duty as they see it; teachers, doctors, osteopathic physicians, and others, and we are concerned in this legislature about this problem in a number of ways: the good samaritan bills, the immunity bills on behalf of state employees, the various matters relating to insurance for malpractice, for negligence on the part of state employees. These are all related matters.

I think that the question of jeopardy under the federal statute is important. I believe there is close to \$600,000 of federal money potentially riding on some bureaucratic decision. If I were assured that the decision would go as Senator Katz hopes it will go. I would certainly be with Senator Katz. I think that this is still a very gray area.

I would support the amendment placed on this by the other body if we were able to strip from the penal section the threat of imprisonment and possibly to reduce the amount of the fine. I certainly do not want to make the professionals more timorous than they are in either direction. We have to have some confidence in our professionals.

So I think that I come down with the position that in its present posture, if amended, I would have to vote against it. If it would be changed to strip away some of this criminal punch, then I think I could support even the word "suspect".

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I would like to apologize to the Senate. I thought I said one thing and I said another. I am reminded of the newspaper that ran an article talking about a defective on the police force, and next day they ran an apology and said what they meant, of course, was that he was a detective on the police force. Well, when I was reporting to the Senate the substance of the telegram in front of me, it was the word "believe" that was offensive to the feds.

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

Mr. GRAHAM: Mr. President and Members of the Senate: This debate is taking place simply over whether we should use the words "reason to believe" or "reason to suspect", and we have an opinion of the Attorney General that the word "suspect" is preferable.

I have a letter here from the Committee on Children and Youth, signed by the

Chairperson Maralyn Schoenberger, and may I quote from that: "More importantly, it is our understanding that the General Counsel of the Social Rehabilitative Services arm of the Federal Government informed our State Health and Welfare Department last Friday that L.D. 1680 would not be in compliance if passed without this crucial amendment."

And let me remind you that if this bill is not in conformity with federal statutes we could lose \$527,000.

The PRESIDENT: Is the Senate ready for the question? The pending question is the motion of the Senator from Androscoggin, Senator Berry, that Huse Amendment "A" be indefinitely postponed. A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed consent of more than one-fifth of those Senators present and voting.

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Thereupon, on motion by Mr. Clifford of Androscoggin, tabled and Tomorrow Assigned, pending the motion by Mr. Berry of Androscoggin that House Amendment "A" be Indefinitely Postponed.

Divided Report

The Majority of the Committee on Taxation on, Bill, "An Act Granting a Property Tax Exemption for Property Leased by Community Mental Health Centers." (H. P. 480) (L. D. 599)

Reported that the same Ought to Pass.

Signed:

Senators:

WYMAN of Washington
JACKSON of Cumberland

Representatives:

MORTON of Farmington
MAXWELL of Jay
TWITCHELL of Norway
SUSI of Pittsfield
FINEMORE of Bridgewater
IMONNEN of W. Paris
COX of Brewer
MULKERN of Portland

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Senator:

MERRILL of Cumberland

Representatives:

DAM of Skowhegan
DRIGOTAS of Auburn

Comes from the House, the Majority report Read and Accepted and the Bill Passed to be Engrossed.

Which reports were Read.

Thereupon, on motion by Mr. Wyman of Washington, tabled and Specially Assigned for April 18, 1975, pending acceptance of Either Report.

Divided Report

The Majority of the Committee on State Government on, Bill, "An Act to Restrict Armed Forces Preferences in State Employment to Veterans Who Were Not Career Officers or Career Enlisted Personnel." (H. P. 398) (L. D. 487)

Reported that the same Ought to Pass in New Draft under New Title: "An Act to Restrict Armed Forces Preferences in State Employment to Veterans Who Were Not Career Officers or Career Enlisted Personnel and to Remove a Barrier to Affirmative Action Programs" (H. P. 1491) (L. D. 1739)

Signed:

Senators:

CURTIS of Penobscot

WYMAN of Washington
GRAHAM of Cumberland

Representatives:

KANY of Waterville
PELOSI of Portland
FARNHAM of Hampden
QUINN of Gorham
LEWIN of Augusta
SNOWE of Auburn
STUBBS of Hallowell
COONEY of Sabattus
WAGNER of Orono

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Representative:

CARPENTER of Houlton

Comes from the House, the Majority report Read and Accepted and the Bill, in New Draft, Passed to be Engrossed.

Which reports were Read.

Thereupon, the Majority Ought to Pass in New Draft Report of the Committee was Accepted in concurrence, the Bill in New Draft Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on State Government on, Bill, "An Act to Send to the People in a Special Advisory Election the Question of whether or not the Maine Legislature Shall Repeal its Ratification of the So-called "Equal Rights Amendment". (H. P. 851) (L. D. 1040)

Reported that the same Ought Not to Pass.

Signed:

Senators:

CURTIS of Penobscot
GRAHAM of Cumberland

Representatives:

QUINN of Gorham
PELOSI of Portland
WAGNER of Orono
SNOWE of Auburn
FARNHAM of Hampden
KANY of Waterville
CARPENTER of Houlton
COONEY of Sabattus

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senator:

WYMAN of Washington

Representatives:

STUBBS of Hallowell
LEWIN of Augusta

Comes from the House, the Majority Ought Not to Pass report Read and Accepted.

Which reports were Read and the Majority Ought Not to Pass Report of the Committee Accepted in concurrence.

Senate

Leave to Withdraw

Mr. Thomas for the Committee on Business Legislation on, Bill, "An Act to Prohibit Coordination Benefits under any Group Health Insurance Policy." (S. P. 65) (L. D. 182)

Reported that the same be granted Leave to Withdraw.

Mr. Trotzky for the Committee on Natural Resources on, Bill, "An Act to Require the Consideration of Economic Factors in the Location of Developments under the Site Location of Development Act." (S. P. 246) (L. D. 828)

Reported that the same be granted Leave to Withdraw.

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

Ought to Pass

Mr. Thomas for the Committee on Business Legislation on, Bill, "An Act to Increase the Amount of Employee Life Insurance." (S. P. 377) (L. D. 1228)

Reported that the same Ought to Pass.

Mr. Johnston for the Committee on Business Legislation on, Bill, "An Act to Increase the Amount of Dependent's Coverage for Group Life Insurance." (S. P. 378) (L. D. 1229)

Reported that the same Ought to Pass.

Which reports were Read and Accepted, the Bills Read Once and Tomorrow Assigned for Second Reading.

Ought to Pass — As Amended

Mr. Reeves for the Committee on Business Legislation on, Bill, "An Act to Require the Bureau of Purchases to Publish a Manual on State Purchasing." (S. P. 323) (L. D. 1100)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-60).

Which report was Read and Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Mr. Graffam for the Committee on Liquor Control on, Bill, "An Act Relating to Special Agency Stores." (S. P. 290) (L. D. 1015)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-59).

Which report was Read.

Thereupon, on motion by Mr. Hichens of York, tabled and Tomorrow Assigned, pending Acceptance of the Committee Report.

Mr. Thomas for the Committee on Business Legislation on, Bill, "An Act Relating to the Registration and Practice of Professional Engineering." (S. P. 112) (L. D. 377)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-61).

Which report was Read.

Thereupon, on motion by Mr. Reeves of Kennebec, tabled and Specially Assigned for April 18, 1975, pending Acceptance of the Committee Report.

Committee of Conference Report

The Committee of Conference on the disagreeing action of the two branches of the Legislature on, Bill, "An Act to Remove Certain Provisions in the Motor Vehicle Statutes Concerning Unnecessary Tire and Brake Noises." (S. P. 100) (L. D. 378)

ask leave to report: that they are unable to agree.

On the part of the Senate:

GREELEY of Waldo
MERRILL of Cumberland
CLIFFORD of Androscoggin

On the part of the House:

GAUTHIER of Sanford
BENNETT of Caribou
MISKAVAGE of Augusta

Which report was Read and Accepted. Sent down for concurrence.

Second Readers

The Committee on Bills in the Second Reading reported the following:

House

Bill, "An Act to Repeal Reference to Dairy and Farm Products of Institutions within the Department of Mental Health and Corrections." (H. P. 514) (L. D. 632)