

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 20, 1991 to July 10, 1991

pending question before the House is acceptance of the Committee Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

66 having voted in the affirmative and 55 in the negative, the Committee Report was accepted, the Bill read once.

Committee Amendment "A" (S-325) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" (S-325) in concurrence.

(S.P. 502) (L.D. 1340) Bill "An Act to Authorize a General Fund Bond Issue in the Amount of \$15,000,000 to Help Municipalities and Water Districts with the Costs of Capital Construction to Protect Public Water Supplies" Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-326)

(H.P. 1273) (L.D. 1844) Bill "An Act to Amend the Tree Growth and Open Space Laws" Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-617)

Under suspension of the rules, Second Day Consent Calendar notification was given, the Senate Paper was passed to be engrossed as amended in concurrence and the House Paper was passed to be engrossed as amended and sent up for concurrence.

The Chair laid before the House the following matter: Majority Report of the Committee on Labor reporting "Ought to Pass" as amended Committee Amendment "A" (H-593) on Bill "An Act to Increase Penalties for Child Labor Law Violations" (H.P. 635) (L.D. 905) and Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "B" (H-594) on same Bill which was tabled earlier in the day and later today assigned pending the motion of Representative McHenry of Madawaska that the House accept the Majority "Ought to Pass" Report.

Subsequently, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (H-593) was read by the Clerk and adopted.

Under suspension of the rules, the bill was read a second time.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: What you see before you are two different bills, Committee Amendment "A", which has just been adopted to the Child Labor Law and Committee Amendment "B", which is the mirror of that regarding the Child Labor Law portion. However, there is one major difference of which I cannot support Amendment "A" and that is the last portion which puts into it the provision that a person who is a minor and was injured has, in addition to Workers' Compensation claim rights, a Common Law right to sue. I believe that such a provision changes so much

the Workers' Compensation Law that it would be, at this time, an inappropriate change as we are now looking at the reform of entire Workers' Compensation laws of this state.

One can argue, and undoubtedly will, that such a provision is appropriate in certain circumstances for a minor who is injured. However, let me tell you that, if you are to do this, you are changing the exclusivity of the Workers' Compensation law and, in reality, you are not getting anything for your money. All you are getting is additional litigation. In fact, you can do two different things under Committee Amendment "A", you can sue for Workers' Compensation or/and one or the other or both you can sue at Common Law for a tort claim.

I suggest that this is an improper expansion of rights that is truly opposite to the philosophy of Workers' Compensation. It broadens to a degree which is improper, in my opinion, to the work force in this state.

I would ask you to vote against this bill that is before you with Committee Amendment "A", so that we may go on to adopt Committee Amendment "B", which is the Child Labor Law provisions of the Act which do have the unanimity of the committee. If you can do that, we can get on with passing a good Child Labor Law reformation which hasn't been done in this state for decades. Otherwise, what you are doing, in my opinion, is adopting a Child Labor Law and then with it incorporating or attempting to incorporate a Workers' Compensation amendment which has no part of this bill. I urge you to vote against this bill in its present form with Committee Amendment "A."

Mr. Speaker, I request the yeas and nays.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Lipman.

Representative LIPMAN: Mr. Speaker, Ladies and Gentlemen of the House: For this particular aspect of the bill, I would urge you to go with the Majority and the reason is that we are talking about a 15-year old child who was killed and the total amount that could be recovered for this child under our law as it stands today is \$7,000. This child was on a garbage truck and was illegally employed.

What we are saying is, if you do violate the Child Labor Law and you put a child on dangerous machinery and equipment and that child gets killed, then you are entitled to your Common Law remedy. That is the only fair way, the only equitable way, and I would ask you to support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I will not repeat the excellent comments from the Representative of Augusta but I would point out to the members of the House why the majority of the committee felt it was wise to put in the right to sue. Please keep in mind, when you are 15 years old going to work, you are working for the very minimum wage. If you are injured for a 10-year period or 20-year period, whatever that period may be, your opportunity to increase from that minimum wage is extremely limited. We have had occasions in this state of people who are hiring children and acting irresponsibly. When that limits that child's development in the work field, I say that that youth does, in fact, have a right to a remedy beyond the two-thirds of the minimum wage that the Workers' Compensation entitles you to.

I also would refer to an earlier speaker's

comment on exclusivity — I think when you use that principle of exclusivity, you are really saying that we will exclude the youth from their proper welfare.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I want to congratulate the committee. They worked long and hard on this package. We had a multiple of bills that came before our committee, we combined them into one package and, on this last point, that is where we diversified. The committee realized the importance of giving the superintendents much more control than they have on work permits. The committee understood that penalties for Child Labor Law needed to be increased.

Along these lines of the penalties being increased, you are looking at Committee Amendment "A", and you will see that those of us on the Majority Report chose not to burn our Workers' Compensation System anymore when we have employers that illegally hire minors. We are not talking about recording or reporting violations, we are talking about those situations where a minor could not have received a work permit. That is the difference between the reports.

What we are saying to the business community is, if you illegally hire minors in those situations where they could not, by law, get a work permit, then you subject yourself to the civil remedy. To protect our minors in the work force, I believe, is only right.

The reason I didn't want to tie this into a Workers' Compensation package was because, as time proved, we even had the budget tied into the Workers' Compensation package and what I didn't want was to have this issue clouded. I don't feel that employers who illegally hire minors in dangerous situations or where there is hazardous machinery should be protected by this legislature or its Governor.

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

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

The SPEAKER: The pending question before the House is passage to be engrossed as amended. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 132

YEA - Anderson, Anthony, Bailey, H.; Bell, Cahill, M.; Carroll, D.; Carroll, J.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duffy, Duplessis, Dutremble, L.; Erwin, Farnsworth, Farnum, Gean, Goodridge, Gould, R. A.; Gray, Gwadosky, Handy, Heino, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Kutasi, LaPointe, Larrivee, Lawrence, Lemke, Lipman, Luther, Macomber, Manning, Marsh, Martin, H.; Mayo, McHenry, Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Parent, Paul, Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richards, Richardson, Rotondi, Ruhlin, Rydell,

Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevens, P.; Swazey, Tammaro, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Ault, Barth, Bennett, Bowers, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Hepburn, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Merrill, Murphy, Nash, Ott, Pendexter, Pines, Reed, G.; Salisbury, Savage, Stevenson, Tupper, Whitcomb.

ABSENT - Adams, Aliberti, Bailey, R.; Boutilier, Butland, Carleton, Graham, Gurney, Hale, Heeschen, Hichens, Mahany, McKeen, Pendleton, Reed, W.; Ricker, Strout, Tardy.

Yes, 103; No, 30; Absent, 18; Paired, 0; Excused, 0.

103 having voted in the affirmative and 30 in the negative with 18 being absent, L.D. 905 was passed to be engrossed as amended by Committee Amendment "A" (H-593) and sent up for concurrence.

The Chair laid before the House the following matter: Majority Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (H-590) on Bill "An Act to Protect the Public from Unsafe Industrial and Commercial Facilities" (H.P. 258) (L.D. 349) and Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill which was tabled earlier in the day and later today assigned pending the motion of Representative McHenry of Madawaska that the House accept the Majority "Ought to Pass" as amended by Committee Amendment "A" (H-590) Report. (Roll Call requested)

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

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

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: Before us we have what I feel is the most important bill to come through the Labor Committee this year. This bill was also in front of the 114th where it ended in a Governor's veto. The biggest argument of the veto message back then was clarity and definition.

What the committee did, through Committee Amendment "A", was to address the points of the bill that the administration had a problem with in clarity and also with the DOL. There were four major problems with the bill as was in the 114th which we addressed. The bill didn't define if it was an industrial or commercial facility and it applied to any facility of over 50 employees. The new bill, as amended, restricts application to industrial. It only deals with facilities of over 100 employees and it also defines what an industrial facility is.

The second point of objection was that the bill applied to any dangerous equipment and it didn't define equipment. The committee addressed that with the bill as amended that we limit hazardous equipment to boilers or pressure vessels.