

MAINE STATE LEGISLATURE

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ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Require Overtime Pay for Employees of Large Agricultural Employers" H.P. 283 L.D. 347

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-155)** (9 members)

Minority - **Ought Not to Pass** (3 members)

Tabled - April 10, 1997, by Senator **CATHCART** of Penobscot.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-155)** Report, in concurrence

(In House, April 9, 1997, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-155).**)

(In Senate, April 10, 1997, Reports **READ.**)

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you Mr. President, men and women of the Senate. I urge you to support, unanimously, this piece of legislation, to require overtime pay for employees of large agricultural employers. What this bill would do is remove an exemption that has been in the wage and hour laws of the State of Maine, to make certain that individuals who are employed in an egg factory will have to be paid overtime when they are required to work more than 40 hours a week. This is basic fairness to workers and it must be enacted. The amendment before us says that individuals employed directly or indirectly for, or at, an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection. Maine law exempts, as you know, agricultural and seasonal jobs from overtime pay because, as in the case with the potatoes and the blueberries and some fish processing, it's necessary to get the work done very quickly and get the processing done or get them shipped out to where they have to go, or frozen, or whatever it takes, and for that reason it's very logical. But, we're not talking about seasonal employment here that has to be done quickly. We're talking about year round employment in a factory. And I have pay slips from DeCoster Egg Farms, which is one of the ones that will be included under this, that show workers working up to 119, 120 hours a week with no overtime pay. This has to stop and we really must pass this legislation to assure that these workers are treated fairly. We did have testimony, neither for nor against, from the Executive Director of the Maine Poultry Federation, Mr. William Bell from Farmingdale and he told us that, "Dorothy Egg Farms, which also

has 300,000 laying birds, do not oppose this bill because they," I'm quoting, "they are good employers. Dorothy Egg Farms already pays overtime pay." I think everyone should have to be under the same laws and all workers should have the same protection under the law and have fair pay and I urge you to give this bill your unanimous support, and Mr. President, I request a roll call. Thank you Mr. President.

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

Senator **MILLS:** Thank you Mr. President, men and women of the Senate. I rise simply to share some sentiments that I've just heard expressed by Senator Cathcart from Penobscot. I think it was probably 35 or 40 years ago when I spent the last three weeks of my summer vacation working in a canning factory. Let's see, I worked 17 hours a day times six or seven, it was over 100 hours a week at, I think it was \$.85 an hour, no overtime and I did because I was a college kid and they didn't want to train anybody else to run the pressure cooker. And there was a guy from Bowdoin next to me, who did the mixing machine and they didn't want to train anybody else to run that machine, so while everybody else worked 8 or 8 1/2 hours, we worked 17 hours each. And I remember the experience, I'll remember it all of my life. When you spend 17 hours a day straight at one job it makes an impression on you. In fact, you fend off sleep for so long that when you get home and you lie down, you wake up in the middle of the night running your machine and trying to turn lights on and the anxieties go with you into dream world.

I understand the reasons for the agricultural exemption that permits farmers to get their hay in by working people 17 hours a day. It permits fishermen to get certain things done by essentially overworking people for limited periods of time. I understand why agricultural dairy farms and so forth, occasionally work people in this fashion. The reason I joined on this bill however, is my perception of the egg farm operation Mr. DeCoster runs is that it's very parallel to a garment factory or a shoe factory. It runs steady, year round, all of the means of production are right there within certain buildings that adjoin each other. So, what's happening is that making use of this agricultural exemption, there are certain people who are working 90 or 100 hours a week, this week, next week, the week after and every week thereafter.

I can tell you that after a certain time, even after the three week experience that I had, and certain parallel situations that I had, I remember, in the Navy, an all-nighter that I pulled in college and some all-nighters that I pulled getting ready for trials, on those occasions when you stay up, when you work your body 17 hours a day, or even in the Senate from time to time, I can remember certain ends of certain sessions we've had around here, where your ability to function goes to pot. You begin to do things that are dangerous to yourself. I've practically stumbled down the marble steps here in this building, just because I'd been here so long and was pushing myself beyond what I normally should.

At some point, the government here, the State of Maine, does have a very strong health safety and welfare interest in seeing to it that the people who work at this farm, those who may even voluntarily be exposing themselves to this are drawing back and restrictive, in some fashion, so that perpetuates a work place where accidents are more likely to happen and where people's health is likely to diminish because of what they're doing to

themselves. I really think that we're not doing any great harm to Mr. DeCoster's operation. I think that he can essentially keep his payroll costs at a level that is roughly comparable to what he's presently incurring, simply by employing more people and working them each 40 hours a week, rather than working a few people 60, 80 or 100 hours a week.

It isn't a very popular thing to do, in the last few years, to say anything nice about Jack DeCoster but I'd like to, if I may be permitted. Many of you may remember this, I think it was about a decade ago, or 10 or 15 years ago that he actually sold this operation in Turner and took back paper financing on it and attempted to make a transition in the new ownership while he went on to do other things in other states and the operation failed economically, failed miserably and Mr. DeCoster personally returned to the Turner region, took over the reigns of the operation that he had started and brought it back into solvency, and I applaud him for that. I think the people that live in that region owe him a great debt of gratitude for bringing back this industry from the verge of failure. Nevertheless, I feel that we're not imposing on him, to any great extent, by requiring that he pay these people time and a half for over 40. He has told us that he already does pay, in certain crews, in certain segments of the operation, time and a half to those who work over 40 because law requires it. The law that we invite you to pass today will simply apply to certain segments of his operation where they are not currently being paid time and a half. Thank you.

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

Senator **KIEFFER:** Thank you Mr. President, ladies and gentlemen of the Senate. I've listened very intently to this debate and I certainly want to thank the committee for the hard work and effort that they did put into this very difficult issue. However, I have a problem in this Body putting themselves in a position of creating retribution, perhaps, against a business for what they have done in the past. If we are to pass legislation, for example, regarding hospitals in the State of Maine, are we then going to exclude only, but either, the largest or the smallest hospital in the state because of some animosity that may or may not exist? I think we're putting ourselves in a very dangerous position in taking that position. I believe it's our job to pass legislation that deals with an entire industry, if it is necessary. I think we have done that in the past, pretty well. But to take an entire industry and for some magical reason use a figure of, whether it is a 100,000 chickens or baseball bats, or 300,000 chickens or baseball bats, I don't know what the magical number in that is, other than in this particular instance it looks like we're singling out one entity for some reason, to penalize. I really have a problem doing that. For that reason and for no other, I can't support this bill. If we were regulating the entire industry I would be more than happy to do so, but to single out either the small end of the spectrum or the large end of the spectrum, for some reason, I can't do that.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President. I rise today, men and women of the Senate, to support the passage of this bill as well. One of the larger operations that produces these eggs is near my district. A number of the people who work in that

facility are in my district. It seems to me that we have to make a clear distinction here, that when we had an exemption for agricultural kinds of activities, that was meant to apply to those kinds of operations that were seasonal, that depended on weather, that depended on a large amount of activity in a seasonal period of time to complete agricultural work, taking in the hay, harvesting a certain species of fish at a particular time where extended periods of time were necessary, primarily on family run, smaller operations, maybe with a very few number of employees working in directly agricultural related industries. These operations of this size are manufacturing operations. They run like manufacturing operations. They're set up like manufacturing operations. They have extensive equipment for processing and sorting the agricultural product. I might even suggest to you that the only reason they have chickens is, they can't figure out some way to produce an egg without a chicken because if they could, they'd eliminate the chickens too, and then you'd have purely a manufacturing process. But since they can't eliminate the chicken, they use this as an excuse that somehow as an agricultural activity like farming and milking cows, bringing in a few lobsters. Well, it's not that kind of an activity. And I think we are far beyond, in this society, treating people like machines where they ought to work 80 and 90 and 100 hours a week or more and not get compensated for those additional hours. If it's not us who's going to protect those individuals from employees who can't make that distinction on their own, then who will? And if we don't do it now, when will we do it? When will we respect an individual's labor and time, and family experience and an opportunity to make a reasonable living? You need to remember that these individuals are being paid minimum wage, primarily. They're not being paid huge amounts of money and it makes a difference to them whether they get time and a half. It makes a difference whether they can afford a little something extra for their family, for the kind of effort and work that they put in, and I don't think it's unreasonable that people ought to expect that from their labor. And, I believe, that it's our responsibility to insure that those individuals who work in a manufacturing environment get paid accordingly and under the same regulations that we would expect from anyone else who might be working in a similar manufacturing environment. I strongly urge you to support this bill now for the integrity of these individual and these employees. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Mr. President, ladies and gentlemen of the Senate. I will not be supporting this bill today for several reasons. Some have already been mentioned. It appears to be singling out a particular business, this being an agricultural business and if you're going to do that, in order to prepare, you need to tax this on to everybody who produces eggs and that doesn't seem to be the case. This is targeted legislation. I will not be a part of it. I'm not sure what all those people who work there make, but I can assure you that probably most of them are pretty appreciative of having a job. A low paying job is better than no job at all. It seems that they're trying to penalize an individual, a company that has streamlined their operation because they are efficient at doing something, you're going to make it tougher for them to stay in business. Well, the five years that I've been here in Augusta, I've tried to vote for legislation that would create jobs for most business, encourage

business to expand and come to this state. I am not going to vote for legislation, hopefully, knowingly anyway, that will drive someone from this state. Also, I'd like to have you keep in mind that if this piece of legislation should pass, what would you do in this person's situation? Pay overtime? Or would you hire more employees and work them 25 to 30 hours with no benefits? Think about that. That discussion has gone on in here. Do you want to be a part of creating that situation? Do you want people working only 30 hours at minimum wage, living in your district, and they can't get overtime? Well, they've got to go take another job if they can find it. Think about that for just a moment.

Now, while you are trying to be the champion of the workers out there, I haven't received any calls, communication from people who work there, that are crying, complaining about having to work overtime. Yes, maybe they're working overtime to benefit their families, to provide that little extra. I take my hat off to them for doing that. I have received some communication, on my desk, from happy employees, who have worked there for years and want to continue to work there. Please don't take their jobs away from them. And if that's the case also, think for a moment, because I'm accustomed, in the past, to having worked overtime, 16, 20 hours a day and it is tough. Where did I work? I worked for the State of Maine. You have state employees out here now that are working those hours, with no overtime. None. They don't ask for it. They work those positions because they want to. I did because I wanted to. That was a part of the job when I took it. It's still here today with state employees, and it's called management today. It's called management. I worked for a fairly good sized police department for a while in the State of Maine. I worked six days a week, straight time every hour. If I wanted any overtime, I was allowed to have some at straight time. I didn't complain. I knew the conditions of that employment when I took it and these people know the conditions of their employment when they take it. They're not chained to any buildings down there. They can leave if they wish and probably you'll find that most of them are happy. Has anybody polled them to find out? If you were going to make an agricultural business pay time and a half over 40, let's do it for everybody. Who are you going to target next session? The new cranberry industry or what? Pretty poor excuse for passing this bill and I surely will not be a part of it and I urge you to think very seriously before you vote for it. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Treat.

Senator **TREAT:** Thank you Mr. President, men and women of the Senate. I also urge you to vote in support of the pending motion. As a member of the Labor Committee who did sit through many hours of hearings and also our work sessions on this, I think that most of the points have been brought out fairly clearly, but I would like to make two additional points, particularly in response to some of the concerns that have been raised by a few of the members of this Body. One of those concerns was just mentioned, which is a concern that this bill is singling out one producer instead of really treating the industry fairly. This is in fact not the case. We were told in the public hearing that there are two other egg producers that would be affected by this, Dorothy Egg Farms which is in the town of Winthrop, a town I represent, and also possibly the Avian Egg Farms, which does research. Both of those egg farms were comfortable with this bill. Dorothy already pays time and a half. In the case of Avian, they

were willing to change over some of their operations to make sure that time and a half would be paid, apparently they did not already pay it. So it does, for some of their operations, affect two other egg farms in this state.

Secondly, we had testimony from the Department of Labor that was very much in support of the bill as amended which made the purpose of it very clear to address those types of egg cultural operations which are truly more of a factory type setting than the seasonal agricultural operation that was intended in the law. And indeed, there apparently has been some confusion over the years calling for Attorney General's opinions on this very question as to whether or not the overtime law applies in this type of facility. And according to the Department of Labor this bill before us would clarify the original intent, and I will quote from their testimony, they say, "We believe that Representatives LaMaire's amended version of L.D. 347 clearly defines the overtime laws for this particular industry as was the original intent of the Maine minimum wage and overtime law as amended in 1976, and as such, we are pleased to support this clarification of the law." This bill only does what is fair for some very, very hard working people in this state. It levels the playing field here in the State of Maine. It is a positive thing for this state and I urge you to support the pending motion. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Lincoln, Senator Kilkelly.

Senator **KILKELLY:** Thank you Mr. President, men and women of the Senate. It's interesting that we're talking about a bill that's very focused on either one particular individual or one particular industry and what I'd like to do is read to you from the amendment. In fact, we already require overtime in a number of other similar processes. The canning, processing, preserving, freezing, drying marketing, storing, packing for shipment or distribution of agricultural products, meat and fish products and perishable foods and what's being added to that are individuals employed directly or indirectly for an egg producing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection. So I think that it's important to know that we are in fact leveling the playing field by doing that. And there are other producers as was pointed out and we certainly heard that before the Agricultural Committee. There are other producers that, in fact, are currently paying overtime and have dealt with that issue. So, that does include others within that industry. I'd like to pose a question to one of the previous speakers. There was an implication that if people did not work as many hours of overtime that more people would be hired. They might be hired at less than full time and not receive benefits and my question is, are the people that are currently working more than 40 hours and for as many as 100 hours currently receiving benefits?

THE PRESIDENT PRO TEM: The Senator from Lincoln, Senator Kilkelly poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Mr. President. In answer to the good Senators question, I don't know if they're receiving benefits or not. That's a question that came up late. While I'm on my feet, I would like to add that you want to have level playing field and that's fine, that's fine. And, I understand that there's no other

egg producing farm in the country that has to pay overtime with the exception of Maryland and they pay overtime for over 60 hours. So, if you're going to make somebody competitive then let's make it competitive. I still believe in free enterprise and if the people at these egg farms surely have a right to become unionized, or they can do whatever they need to do to encourage their bosses to pay them overtime, or whatever the case may be, or benefits in other ways, whether it be CCO time or whatever. But I don't feel that you can compare a canning factory with an egg producing farm. I think that's apples and oranges and doesn't apply here. Thank you.

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

Senator **BENOIT:** Thank you Mr. President and may it please the Senate. I rise in support of the motion and you've heard me say in relation to other legislation in this session that, in speaking against particular pieces of legislation that, "If it ain't broke, fix something else." After the debate here on the floor today and some of the information that I have, I get the impression that something's broke. What bothers me here in this facility is that some people get overtime and some people don't, in this same place of business. I'm going to vote the moral factor and the fairness factor in supporting this motion. Because after all, "If it's broke, fix it." That's the way I intend to vote this particular motion.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE:** Mr. President, I have one very brief thing to say, my fellow members of the Chamber. We often have issues before us that ask us to question what the role of government is in interfering or being involved with businesses and I think we take very seriously our responsibility not to get over involved in the conduct of free enterprise. But in fact, I see as one of our responsibilities making sure that we look after the health and safety of our work force as well as making sure that people get fair pay for honest hard work. I think the conditions that are addressed in this bill are something that most of us in the State of Maine have known about for a long time. And I heard the good Senator from Lincoln, Senator Kilkelly mention earlier that some of the issues have cast sort of a shadow over our agricultural industry, which is a very important and vital part of our economy. And I just wanted to make one comment about that, that I think we wouldn't be addressing this issue today if it were not for the hard work of a lot of good members of the legislative Body and the staff people who work with us who have brought forward something that was very important for us to address and I'm proud of the fact that we are looking at it today and I would be proud to support this motion that's on the floor.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you Mr. President, men and women of the Senate. I apologize for rising again on this but there were just two points that I wish to clarify. First of all, this is not retribution against DeCoster. We will leave that to OSHA. If we were to wish to retaliate against DeCoster we probably would have tried to make these benefits retroactive. Secondly, the

Labor Committee heard much testimony from workers who are very unhappy about being forced to work this many hours, and they do feel they were forced, that they would lose their job if they weren't willing to work however many hours were demanded of them. And I just couldn't help but flash back to my childhood, down south, and want to tell you one quick vignette. Back when I was a little girl there was one of the favorite postcards that people bought, tourists and others, to send to the people back home. It had a picture of black people working in the cotton fields and the caption on this postcard was, "Happy times down south." Now, I would say to you that Maine people never supported slavery and just because not every member of this Body has heard that they're unhappy workers, please believe me, they are and the committee heard plenty of testimony. Thank you Mr. President.

On motion by Senator **CATHCART** of Penobscot, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: **ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LAWRENCE, LIBBY, LONGLEY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - PHILIP E. HARRIMAN**

NAYS: Senators: **HALL, KIEFFER, SMALL**

Senator **ABROMSON** of Cumberland requested and received leave of the Senate to change his vote from NAY to YEA.

32 Senators having voted in the affirmative and 3 Senators having voted in the negative, the motion by Senator **CATHCART** of Penobscot, to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-155)** Report, in concurrence, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (H-155) **READ** and **ADOPTED**, in concurrence.

The Bill as Amended, **TOMORROW ASSIGNED FOR SECOND READING**.

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