

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

**One Hundred And Fourteenth Legislature**

OF THE

**State Of Maine**

**VOLUME III**

**FIRST REGULAR SESSION**  
June 15, 1989 to July 1, 1989  
Index

It is not right to turn around because of increased technology and higher salaries of some of the employees and leave it up to probably a few to determine that they should be unclassified and then be at the mercy of the administration.

I ask that you vote against the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Ketover.

Representative KETOVER: Mr. Speaker, Ladies and Gentlemen of the House: The state employees are major policy influencing positions as well as those in confidential and collective bargaining related roles have always been excluded from collective bargaining related roles. This language has served no identifiable purpose, it only creates doubt, vagueness is very much a part of this, and uncertainty which could result in curtailment of career ladders for hundreds of state employees.

This bill would not add any positions to the bargaining unit, it merely prevents current unit positions from being taken out. Dozens of these positions seeking to remove hundreds of state employees from collective bargaining have been pending before the labor board for more than 6 years. Now they could have done something with these positions during this time but couldn't because of the vagueness of the language in question.

Earlier this session, this body passed, unanimously, and voted overwhelmingly to reclassify 6 division directors' positions at the DEP. The Governor has signed it into law. And action was taken because those positions were involved in the enforcement of environmental standards and we did not want to them subject to undue political influence. Yet those very same positions are among the ones the administration seeks to remove from the protection of collective bargaining. In effect, the language in question may allow the administration to use the labor board to circumvent the will of this legislature.

I urge you to support enactment of this bill.

The SPEAKER: The pending question before the House is the motion of the Representative from Cape Elizabeth, Representative Webster, that L.D. 1195 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 94

YEA - Aikman, Anderson, Bailey, Begley, Butland, Carroll, J.; Curran, Dellert, Dexter, Donald, Farnum, Farren, Foss, Garland, Hanley, Hastings, Hepburn, Higgins, Hutchins, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, McCormick, McPherson, Merrill, Murphy, Paradis, E.; Parent, Pendleton, Pines, Reed, Richards, Seavey, Sherburne, Small, Stevens, A.; Stevenson, Strout, B.; Telow, Tupper, Webster, M.; Wentworth, Whitcomb.

NAY - Adams, Aliberti, Allen, Anthony, Ault, Bell, Boutillier, Burke, Cahill, M.; Carroll, D.; Carter, Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dipietro, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Foster, Gould, R. A.; Graham, Greenlaw, Gurney, Gwadosky, Hale, Handy, Heesch, Hickey, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, LaPointe, Lawrence, Lisnik, Macomber, Mahany, Manning, Marston, Martin, II.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Norton, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Pederson, Pineau, Plourde, Pouliot, Priest, Rand, Richard, Ridley, Rotondi, Ruhlin, Rydell, Sheltra, Smith,

Stevens, P.; Strout, D.; Swazey, Tammaro, Tardy, Townsend, Tracy, Walker.

ABSENT - Brewer, Hichborn, Jackson, Larrivee, Luther, Rolde, Simpson, Skoglund, The Speaker.

Yes, 47; No, 95; Absent, 9; Paired, 0; Excused, 0.

47 having voted in the affirmative and 95 in the negative with 9 being absent, the motion did not prevail.

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

PASSED TO BE ENACTED

An Act to Amend the Liquor Laws Relating to Wine Tasting (S.P. 485) (L.D. 1327) (S. "A" S-271 to C. "A" S-252)

An Act Relating to Returned Check Charges (S.P. 498) (L.D. 1372) (C. "A" S-283)

An Act to Establish a State Arbitration Program for Lemon Motor Vehicles (S.P. 517) (L.D. 1413) (H. "A" H-500 to C. "A" S-222)

An Act Relating to Certain Proprietary Information of Insurance Agents and Brokers (S.P. 519) (L.D. 1426) (C. "A" S-263)

An Act to Amend the Mandatory Shoreland Zoning Law (S.P. 585) (L.D. 1647) (C. "A" S-267)

An Act to Require Installation of Sewage Pump-out Facilities at Certain Marinas (S.P. 600) (L.D. 1677) (H. "A" H-511 to C. "A" S-243)

An Act to Prohibit Unfair Rating Practices in Small Group Health Insurance (S.P. 611) (L.D. 1705) (C. "A" S-282)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Reduce the Potential for Violence During Labor Disputes (H.P. 292) (L.D. 404) (C. "A" H-417 and S. "A" S-262)

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

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: I move that this item be indefinitely postponed.

We spoke about this bill earlier and I want to raise just a couple of those prior points for your consideration. It was a concern of the minority signers that this item was very likely preempted by federal legislation. A further concern was that it did not adequately address the problem.

At the time we spoke about this earlier, I was prevented by what I felt to be good judgment and possibly the rules of the House of discussing another matter that was before the Labor Committee which I am pleased to report was before the House this morning with the unanimous support of the Labor Committee, item 6-2 on your calendar. All members of the Labor Committee believe it is a much more effective means of addressing this problem, it is unanimously supported and we hope, sincerely, that it will indeed address the problem, therefore, it is my opinion that L.D. 404 is no longer necessary and I hope you will support the motion for indefinite postponement.

I request a roll call, Mr. Speaker.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I am not going to bore you anymore with debate. We went through this. In

response to my seatmate in the committee, I have seen what happens to you in the unanimous committee reports when we get down to the end of things. I hope you remember where you were and why you were there and I am sure you will vote against this motion.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: 404 is needed, 404 is the one that is more likely to prevail as far as constitutionality preemption. The members on my committee all know full-well -- the question has been asked and has been addressed that this is the bill that could survive over the preemption problem more than the other bill that will be a unanimous report. We signed on the unanimous report because we feel anything is better than nothing. I assure you, this bill is the best vehicle to address the problem that is facing this state.

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 the motion of the Representative from Falmouth, Representative Reed, that L.D. 404 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 95

YEA - Aikman, Anderson, Ault, Bailey, Begley, Bulland, Carroll, J.; Curran, Dellert, Dexter, Donald, Farnum, Farren, Foss, Foster, Garland, Greenlaw, Hanley, Hastings, Hepburn, Higgins, Hutchins, Lebowitz, Libby, Look, Lord, MacBride, Marsano, Marsh, McCormick, McPherson, Merrill, Murphy, Norton, Paradis, E.; Parent, Pendleton, Pines, Reed, Richards, Seavey, Sherburne, Small, Stevens, A.; Stevenson, Strout, B.; Strout, D.; Telow, Tupper, Webster, M.; Wentworth, Whitcomb.

NAY - Adams, Aliberti, Anthony, Bell, Boutilier, Burke, Cahill, M.; Carroll, D.; Carter, Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Daggett, Dipietro, Dore, Duffy, Dutremble, L.; Erwin, P.; Farnsworth, Gould, R. A.; Graham, Gurney, Gwadosky, Hale, Handy, Heeschen, Hickey, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, LaPointe, Lawrence, Lisnik, Macomber, Mahany, Manning, Marston, Martin, H.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Michaud, Mills, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Paul, Pederson, Pineau, Plourde, Pouliot, Priest, Rand, Richard, Rotondi, Ruhlin, Rydell, Sheltra, Smith, Stevens, P.; Swazey, Tammaro, Tardy, Townsend, Tracy, Walker, The Speaker.

ABSENT - Allen, Brewer, Hichborn, Jackson, Larrivee, Luther, Ridley, Rolde, Simpson, Skoglund.

Yes, 52; No, 89; Absent, 10; Paired, 0; Excused, 0.

52 having voted in the affirmative and 89 in the negative with 10 being absent, the motion did not prevail.

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

PASSED TO BE ENACTED

An Act Making It Illegal to Possess Lobsters Caught Illegally (H.P. 693) (L.D. 945) (S. "A" S-261)

An Act to Amend the Budget to Fund a Position in the Department of Environmental Protection to Review Hydropower Applications (H.P. 748) (L.D. 1052) (C. "A" H-505)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act to Amend the Laws Relating to Sex Offenses (H.P. 763) (L.D. 1067) (C. "A" H-503)

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

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

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: Before we enact this bill, I have been asked to make a short statement for the Record. As most of you know, the Judiciary Committee has considered about 160 bills and about 97 percent of those were unanimous committee reports. The problem with unanimous committee reports is that it gets very little debate and very little explanation. It was the request of several of the groups that appeared before our committee that I make a brief statement to explain the importance of L.D. 1067 to our criminal law process.

This bill, as finalized, makes a number of both substantive and non-substantive modifications for the Maine Criminal Code relating to sex crimes.

The most important non-substantive modification are changes to both the name of Chapter 11 from Sex Offenses to Sexual Assaults and the name of the present crime of gross sexual misconduct, which is Title 17a, M.R.S.A. 253 to the term gross sexual assault. Each such change is designed to more accurately describe the nature of the criminal behavior included therein.

The most important substantive modifications include the elimination of the present distinction between rape, 17a, 252(1) and gross sexual misconduct accomplished by compulsion which is 17a, 253(1). Second, providing to those who are obviously, profoundly mentally disabled further protection from sexual predators.

Third, creating within the newly titled crime of gross sexual assault a new Class B crime, 17a, 252, 253 (2h) addressing parents or surrogate parents who engage in sex with their children.

Fourth, creating within the same newly titled crime, a new Class C crime, 17a, 253 (2i) addressing key mental health professionals or those who pass themselves off as such who are engaged in psychotherapy or therapy akin to psychotherapy with a patient or client engage in sex with that patient or client.

Ladies and gentlemen, the Statement of Fact, which accompanies the finalized L.D. before us accurately and in some detail speaks to all of the modifications of the Maine Criminal Code relating to sex crimes including, of course, that I have highlighted. I will not attempt to further elaborate except in one regard and that is to the elimination of the Class A crime of rape, a crime necessitating actual proof of penetration at trial in favor of a Class A crime of gross sexual assault necessitating proof of direct physical contact only.

It is worthwhile to point out that the representatives of the entity most directly involved in dealing day to day with sex crimes namely victim advocates and prosecutors expressed to our Judiciary