

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

Off Record Remarks

On motion by Senator KANY of Kennebec, ADJOURNED until Friday, June 30, 1989, at 1:00 in the afternoon.

ONE HUNDRED AND FOURTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
91st Legislative Day
Friday, June 30, 1989

The House met according to adjournment and was called to order by the Speaker.

Prayer by Father John Shorty, St. Mary's Catholic Church, Augusta.

The Journal of Thursday, June 29, 1989, was read and approved.

PAPERS FROM THE SENATE

Bill "An Act Concerning the Salaries of the Washington County Treasurer and Deputy Treasurer" (EMERGENCY) (S.P. 663) (L.D. 1776)

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed.

(The Committee on Reference of Bills had suggested reference to the Committee on State and Local Government.)

Under suspension of the rules and without reference to a Committee, the bill was read twice.

Representative Look of Jonesboro offered House Amendment "A" (H-688) and moved its adoption.

House Amendment "A" (H-688) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "A" in non-concurrence and sent up for concurrence.

Resolve, to Modify the Kennebec County Budget (EMERGENCY) (S.P. 662) (L.D. 1775)

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed.

(The Committee on Reference of Bills had suggested reference to the Committee on State and Local Government.)

On motion of Representative Gwadosky of Fairfield, tabled pending reference and later today assigned.

COMMUNICATIONS

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

June 29, 1989

TO: The Honorable Members of the 114th Legislature:

I am returning without my signature or approval H.P. 1259, L.D. 1756, "AN ACT to Ensure a Cooling-off Period before the Hiring of Permanent Replacement Workers during a Labor Dispute."

On June 19 of this year, I requested an opinion from the Maine Supreme Judicial Court regarding my continuing concern that legislation limiting an employer's legal right to hire replacement workers would be preempted by federal law. Yesterday, the Court determined that this bill represents "precisely the kind of state action" that the National Labor Relations Act would preempt if this legislature enacted it into law. The Court stated that "we believe it clear that the Supreme Court would hold that L.D. 1756 is preempted by federal law and is therefore repugnant to the Supremacy Clause (art. VI) of the Constitution of the United States." Opinion of the Justices, Slip Op. at 1, (June 28, 1989).

For this reason, I ask that you respect the considered judgment of the highest court in our state and vote to sustain my veto.

Sincerely,
S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act to Ensure a Cooling-off Period before the Hiring of Permanent Replacement Workers during a Labor Dispute" (H.P. 1259) (L.D. 1756).

Was read.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House: I hope when the vote is taken today that you do vote to override the Governor's veto because this gives a little check and balance to the collective bargaining process. When you bargain your contract, you don't have to fear that there are people out in the streets waiting to take your job if you don't elect to go with the contract that was offered. I still think that this bill gives a little bit of a process to the collective bargaining format of bringing everything in together and it makes it a little bit easier for people to bargain in good faith.

Vision in your mind what it would be like going to the collective bargaining process knowing there are people out in the streets willing to take your job. wanting to take your job if things don't go well at the collective bargaining table.

The only thing we are asking is to give us a chance. Please vote today to override the Governor's veto.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I just want to point out, as I recall from studying government and so forth, it was always my understanding that those powers not specifically given to the federal government are reserved for the states. It was a long time ago that I studied government and I am sure with the march of time, things have changed. It concerns me when the Supreme Court of the State of Maine (and I am going to accept their opinion, I did not go to law school, am not a member of the bar) says that we, the State of Maine, does not have the right to try to maintain labor/peace within our state, that we are preempted by the federal government. I think if that is indeed the case, then we should be considering changes at whatever level is necessary to give a union of states the opportunity to maintain labor/peace and prevent labor strikes. That is my major point and it was a major point in sponsoring the bill and a major point in putting these remarks into the Record today. Those rights should justly remain in the states.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: This bill was a lot different than a lot of other so-called strikebreaker bills this House has seen in years past. This bill had the full support of Maine's biggest employer, not the employee, the employer. I think this tell us something about the mood that this state's attitude has come from. We saw what happened in my area in Jay, we saw what happened at Boise several years prior to that and the rest of the state wants us, as a body, to act to prevent this from degrading Maine citizens as has been done in the past.

The committee worked long and hard to strike a balance. I think with the Governor's signature, this

might not have been challenged. I think this was a way out, this was a way to look almost pro-labor but not have to come through for the people of Maine.

When you vote today, I hope your vote is there for the workers of Maine.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: Our society, as you well know, is a society of laws and one of the primary constitutional rights that we as members of this legislature and the Chief Executive has is to ask the Supreme Court to evaluate questions which seem to be of constitutional moment. Just such a thing was done — the Governor's veto message excerpted only one brief phrase from the opinion of the justices which runs to 7 pages and that I have here before me. He indicated that the court had said that under the Second of the Principles that the court had made note of and I now quote, "We believe it clear that the Supreme Court would hold that L.D. 756 is preempted by federal law and is therefore repugnant to the Supremacy Clause of Article 6 of the Constitution of the United States."

The societal compact which we have allows the states certain rights except under such circumstances as exist here where the federal constitutional rights exercised by the legislature, the Congress of the United States, does certain things which mean that the federal law is the guidepost for consideration.

It seems strange to me that we would (today) not recognize that we should support the system of laws in which we all believe because that is why we are here and recognize that this matter is an unconstitutional exercise of our authority and that we should accordingly sustain the Governor's veto.

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

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: We have had several strikebreaker bills before our committee and the Governor knew full-well that this measure was the one that was the weakest, the one more apt to be ruled unconstitutional. Therefore, I have to assume that he and the Republican members on my committee knew full-well what they were doing when they wanted an opinion from the Justices.

Ladies and gentlemen, this is not the same bill at all, it is not dealing with the same issue. The bill that is presently on the Appropriations Table is the bill that labor wants. It is the bill that will prevent violence at the worksite when there are strikes. This bill does not do that. It does a bit of it but it is not sufficient enough to be ruled constitutional and not to be preempted by federal/national relations. So, the Governor knew full-well what he was doing, he is playing with the press.

I will tell you how far he has gone — so far that he didn't give the Chairman of Labor from the House or the other body an opinion from the Justices, he gave it to the press, he gave it to the Minority Leader, he gave it, I assume, to the Speaker, but he did not give it to the Chairs of the Committee where the bill derived from. Why? Who is playing politics? I played above board and he is not playing above board. We have bills chilled — as the Governor stated, we are vetobating — if we were vetobating, we would have had more bills vetoed but we chilled them in our committee. Therefore, just as a sign to the Governor, I hope that you do vote to override even though the Justices have said that it is preempted because we do have a good strikebreaker bill on the Appropriations Table.

The SPEAKER: After reconsideration, the pending question before the House is, shall this Bill become law notwithstanding the objections of the Governor? Pursuant to the Constitution, the vote will be taken by the yeas and nays. This requires a two-thirds vote of the members present and voting. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 147V

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

NAY - Aikman, Allen, Anthony, Ault, Bailey, Begley, Brewer, Butland, Carroll, J.; Curran, Dellert, Dexter, Donald, Farnum, Farren, Foss, Foster, Garland, Greenlaw, Hanley, Hastings, Hepburn, Higgins, Hutchins, Jackson, 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.

ABSENT - Anderson, Constantine, Farnsworth, Larrivee, Nutting, Paradis, P.; Plourde.
Yes, 89: No, 55: Absent, 7: Paired, 0: Excused, 0.

89 having voted in the affirmative and 55 in the negative with 7 being absent, the Governor's veto was sustained. Sent up for concurrence.

The following Communication:

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE 04333

June 29, 1989

TO: The Honorable Members of the 114th Maine Legislature

I am returning, without my signature or approval, H.P. 408, L.D. 551, "AN ACT To Allow Recovery for Wrongful Death of an Unborn Viable Fetus."

I share with the proponents of this bill a deep sympathy for those who experience the tragedy of the wrongful death of a fetus. Fortunately, we are not without recourse under present law. In Maine, a woman already has a right to recover for emotional distress, mental anguish, and medical expenses resulting from the loss of her pregnancy. I would also support legislation that would expand this right so long as its use and benefits are clearly restricted in law to a woman or a couple who suffer such a loss.

This bill, while it attempts to help those who have suffered the loss of a viable fetus, raises many disturbing questions that could lead to endless and potentially harmful litigation. Therefore, after careful consideration, I have determined that my concerns far outweigh any possible benefits the legislation might provide.

The bill would change the law dramatically. It would create in Maine's Probate Code an estate for an

unborn, viable fetus, thus permitting a personal representative of the estate to bring a legal action when death of the fetus occurs as a result of a wrongful act. In an effort to address the many concerns raised by the original bill, an amendment was added so that a mother of a fetus could not be held liable for wrongful death. Amendments were also added to restrict causes of action to cases where the mother or father of the fetus is still alive, and to prohibit actions against health care providers in some instances.

Notwithstanding these efforts, there are two major problems with L.D. 551. First, it would introduce serious inconsistencies into the Probate Code by giving status and rights to the estate of a fetus in one of the sections, a concept which is different from and in conflict with other sections. Considerable litigation would be required to determine, for example, how a viable fetus which enjoys rights under the wrongful death section, would be affected by sections such as those governing guardianship, estate of dead persons, appointment of personal representatives of estates, beneficial rights, and rights of inheritance.

Second, the bill leaves unanswered many unsettling questions of interpretation that we should not tolerate in our laws. For instance, the bill leaves open the possibility of someone bringing a cause of action on behalf of the estate of the fetus over the mother's objections. It also greatly increases the potential for more medical malpractice suits for situations which are not explicitly excluded. Finally, because the bill confers a legal personality on a fetus for purposes of wrongful death actions, it greatly expands the opportunities for applying this legal status to other circumstances.

I am supportive of the right to recover for the anguish and loss resulting from the untimely death of a viable fetus as currently allowed under Maine law. I would also support legislation that would expand the right to bring an action if the legislation restricted its use and benefits to the mother or both parents of the fetus.

Because this legislation does not provide such assurances, I respectfully request that you sustain my veto of L.D. 551.

Sincerely,
S/John R. McKernan, Jr.
Governor

Was read and ordered placed on file.

The accompanying Bill "An Act to Allow Recovery for Wrongful Death of an Unborn Viable Fetus" (H.P. 408) (L.D. 551) (S. "A" S-274 to C. "A" H-429).

Was read.

On motion of Representative Gwadosky of Fairfield, tabled pending further consideration and later today assigned.

ENACTOR
Emergency Measure
(Reconsidered)

An Act Regarding the Employment of 15-year-olds in Public Accommodations for Lodging (H.P. 293) (L.D. 405) (H. "B" H-682 to H. "A" H-654)

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

On motion of Representative Kilkelly of Wiscasset, under suspension of the rules, the House reconsidered its action whereby L.D. 405 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby House Amendment "A" (H-654) as