

MAINE STATE LEGISLATURE

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House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

Volume II

First Special Session

May 16, 1997 - June 20, 1997

Second Regular Session

January 7, 1998 - March 18, 1998

L.D. 1443 Corporation Intends to Obtain Nonprofit Status
Resolve, Directing the Family Law Advisory Commission to Review Proposals Concerning the Use of Ethical Decision-making in Family Law Cases

L.D. 1681 An Act Regarding the Receipt of Benefits by a Child Based on a Parent's Disability and the Calculation of Parental Support Obligations

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,
S/Sen. Susan W. Longley S/Rep. Richard H. Thompson
Senate Chair House Chair
Was read and ordered placed on file.

The following Communication: (H.C. 268)

STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON LEGAL AND VETERANS AFFAIRS

May 15, 1997

Honorable Mark W. Lawrence, President of the Senate
Honorable Elizabeth H. Mitchell, Speaker of the House
118th Maine Legislature
State House
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Legal and Veterans Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

L.D. 5 An Act to Amend the Election Laws Concerning Vacancies in the Office of State Representative

L.D. 1212 An Act to Strengthen Legislative Ethics Laws

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,
S/Sen. Beverly C. Daggett S/Rep. John L. Tuttle, Jr.
Senate Chair House Chair
Was read and ordered placed on file.

The following Communication: (H.C. 269)

STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON TRANSPORTATION

May 15, 1997

Honorable Mark W. Lawrence, President of the Senate
Honorable Elizabeth H. Mitchell, Speaker of the House
118th Maine Legislature
State House
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Transportation has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1382 An Act to Reimburse Law Enforcement Agencies for Their Costs Related to the Prosecution of Criminal and Traffic Violations

We have also notified the sponsor and cosponsors of the Committee's action.

Sincerely,
S/Sen. William B. O'Gara S/Rep. Joseph D. Driscoll
Senate Chair House Chair
Was read and ordered placed on file.

The following Communication: (H.C. 270)

STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON UTILITIES AND ENERGY

May 15, 1997

Honorable Mark W. Lawrence, President of the Senate
Honorable Elizabeth H. Mitchell, Speaker of the House
118th Maine Legislature
State House
Augusta, Maine 04333

Dear President Lawrence and Speaker Mitchell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Utilities and Energy has voted unanimously to report the following bills out "Ought Not to Pass":

L.D. 1785 An Act to Provide for a Simplified Restructuring of the Electric Industry

L.D. 1794 An Act to Create a Competitive Market for Electricity While Protecting Consumers and the Environment

L.D. 1798 An Act to Permit Electric Utilities to Restructure in Ways That Improve the Economy of the State

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,
Sen. Richard J. Carey S/Rep. Kyle W. Jones
Senate Chair House Chair
Was read and ordered placed on file.

The following Communication: (H.C. 271)

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0001

May 16, 1997

To the Honorable Members of the 118th Legislature:

Enclosed please find H.P. 88, L.D. 113, "An Act to Prohibit the Employment of Professional Strikebreakers," which I am returning without my signature or approval.

I cannot approve the legislation because the provisions are unconstitutional, and if enacted, likely would subject the State of Maine to liability under the federal civil rights laws. The legislation sends a false message to the working community of Maine in that it unreasonably raises the hope of workers that the State has a role to play in federally regulated labor issues. An equally compelling reason is the competitive disadvantage this law would impose on Maine businesses and Maine workers.

Judicial precedent and recent advice from Maine's Attorney General make clear that L.D. 113 is unconstitutional. In 1989, the Maine Superior Court struck down the provisions of existing Maine law (26 MRSA §595(3) and (4)) limiting an employer's right to hire replacement workers as unconstitutional, finding the law to be preempted by the federal National Labor Relations Act ("NLRA") (29 USC §151 et seq.). The court emphasized that state regulation of labor practices is generally preempted under the NLRA, and found that the Maine law's imposition of

significant restrictions on an employer's ability to continue business in the initial stages of a strike were unlawful restrictions on the employer's federally protected use of economic self help weapons under the NLRA. In a June 1989 Opinion of the Justices, the Maine Supreme Judicial Court Justices reinforced the same theme when they reviewed the provisions of another bill that limited the right of an employer to hire replacement workers during a labor dispute by imposing a 45 day cooling off period upon a specified vote by striking employees. They cautioned that "the right of an employer to continue his operations in the face of a strike by hiring replacement workers is one of the weapons of economic pressure that Congress left unregulated and to be controlled by the free play of economic forces." Finally, on May 8, 1995, the Maine Attorney General issued an Opinion finding that the substantively identical terms of L.D. 686 pending before the Second Regular Session of the 117th Legislature were unconstitutional, preempted by the NLRA.

The guidance of the courts and Attorney General in this matter is clear. This law is unconstitutional because it is designed to significantly limit an employer's federal right to maintain operations in the face of an employee strike by limiting the pool of skilled replacement workers available for hire. It effectively would change the careful balance of economic rights and remedies set out for employers and employees under the NLRA. Furthermore, to ignore the clear guidance of the courts places the State of Maine at risk of liability of a federal civil rights action similar to that in Golden State Transit Corp. v. City of Los Angeles, 493 U.S. 103 (1989), where the United States Supreme Court ruled that an employer could bring a federal civil rights action against a governmental entity which interfered with the employer's federally protected use of economic options in labor disputes.

Enactment of this bill would create only an illusory remedy against the use of professional strikebreakers. The illusion could be very damaging for employees in a labor dispute, potentially leaving them stranded after they have decided to strike based upon their perceived advantage under this legislation, only to find later that the law is unconstitutional and that the employer can use its federally protected self help right to employ replacement workers from firms specializing in strike operations.

My overriding concern in all my actions as Governor is developing and maintaining quality jobs for Maine people. By sending a negative signal to those whose investment decisions underlie all our job creation efforts, this bill would substantially undermine this goal and put at risk the job prospects of the very workers it is designed to protect.

Because of the objections outlined above, I am in firm opposition to L.D. 113 and I respectfully urge you to sustain my veto.

Sincerely,
S/Angus S. King, Jr.
Governor

Was read and ordered placed on file.

On motion of Representative KONTOS of Windham, the accompanying Bill "An Act to Prohibit the Employment of Professional Strikebreakers" (H.P. 88) (L.D. 113) was tabled pending reconsideration and later today assigned.

The following Communication: (H.C. 272)
STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0001
May 16, 1997

To the Honorable Members of the 118th Legislature:

Enclosed please find H.P. 41, L.D. 66, "An Act to Prohibit an Employer from Hiring Replacement Workers During a Strike," which I am returning without my signature or approval.

My reasons for withholding my approval on L.D. 66 are the same outlined in my accompanying veto message returning L.D. 113 to the Legislature: L.D. 66, section 2 is unconstitutional and would send a false message to the working community of Maine that the State of Maine may intervene in federally regulated labor issues.

I cannot support L.D. 66 in light of judicial precedent, recent advice from Maine's Attorney General, and more general concerns about the legislation's effect on our ability to attract and maintain quality jobs in the state. The provisions of section 2 would require that a contract between an employer and replacement workers must provide that when the strike is settled or if the employees offer unconditionally to return to work at any time after striking, replacement workers will not be retained in preference to the strikers. This significantly impairs the right of the employer to hire permanent replacement workers at all times during a strike. In a 1989 Opinion, 571 A.2d 805 (Me. 1989), the Justices of the Maine Supreme Judicial Court reviewed the provisions of less restrictive legislation that limited the right of an employer to hire replacement workers during a labor dispute by imposing a 45 day cooling off period upon a specified vote by striking employees. The Justices found that the less restrictive 45 day delay of the employer's right to hire permanent replacement workers would be preempted by the NLRA and was, therefore, repugnant to the Supremacy Clause of the United States Constitution. Their reasoning would be equally applicable to the more restrictive provisions of L.D. 66 that effectively would limit the employer's right to contract with permanent replacement workers at any time after the strike if certain specified conditions (all controlled by the striking employees) were satisfied. Applying the analysis of the Justices to the provisions of L.D. 66, it is clear that the legislation would invade the employer's right to economic self help to maintain his operations in the face of a strike that is protected by the NLRA and would disrupt the balance intended by Congress between the tools of economic pressure available to the employer and striking employees. This conclusion is further reinforced by the May 8, 1995 Opinion of the Attorney General which found that the very similar provisions of legislation pending before the Second Regular Session of the 117th Legislature, effectively preventing employers from hiring permanent replacement workers, would be preempted by the NLRA and, therefore, unconstitutional.

For the same reasons expressed in my accompanying veto message on H.P. 88, L.D. 113, "An Act to Prohibit the Employment of Professional Strikebreakers," I must withhold my approval on L.D. 66. This legislation has the same constitutional flaws that could expose the State to potential federal civil rights liability. It also shares the serious flaw of creating an illusory remedy for workers who could rely to their detriment on the state law, while sending a negative signal to the business community that Maine will not honor employers' federally protected rights in labor disputes.

My overriding concern in all my actions as Governor is developing and maintaining quality jobs for Maine people. By sending a negative signal to those whose investment decisions underlie all our job creation efforts, this bill would substantially undermine this goal and put at risk the job prospects of the very workers it is designed to protect.

Because of the objections outlined above, I am in firm opposition to L.D. 66 and I respectfully urge you to sustain my veto.

Sincerely,
S/Angus S. King, Jr.
Governor

Was read and ordered placed on file.

On motion of Representative KONTOS of Windham, the accompanying Bill "An Act to Prohibit an Employer from Hiring Replacement Workers During a Strike," (H.P. 41) (L.D. 66) was tabled pending reconsideration and later today assigned.

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on **State and Local Government** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-488) on Bill "An Act to Provide Legal Counsel for Legislative Committees" (H.P. 847) (L.D. 1152)

Signed:

Senators: NUTTING of Androscoggin
LIBBY of York

Representatives: AHEARNE of Madawaska
BUMPS of China
FISK of Falmouth
BAGLEY of Machias
GERRY of Auburn
LEMKE of Westbrook
GIERINGER of Portland
KASPRZAK of Newport
SANBORN of Alton
DUTREMBLE of Biddeford

Minority Report of the same Committee reporting "**Ought Not to Pass**" on same Bill.

Signed:

Senator: GOLDTHWAIT of Hancock
Was read.

On motion of Representative AHEARNE of Madawaska the Majority "**Ought to Pass**" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-488) was read by the Clerk and adopted. The Bill was assigned for second reading later in today's session.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 110) (L.D. 389) Bill "An Act to Exclude from the Definition of 'Employment' Services Provided by Lessees of Taxicabs" Committee on **Labor** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-237)

(S.P. 150) (L.D. 429) Bill "An Act to Protect the Potato Industry from the Spread of Serious Disease" (EMERGENCY) Committee on **Agriculture, Conservation and Forestry** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-241)

(S.P. 290) (L.D. 941) Bill "An Act to Enhance the Potato Industry" Committee on **Agriculture, Conservation and Forestry** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-240)

(S.P. 372) (L.D. 1231) Bill "An Act Regarding the Leasing of Buildings" (EMERGENCY) Committee on **Judiciary** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-242)

(S.P. 439) (L.D. 1385) Bill "An Act to Promote Parity in the Regulation of Insurance Sales by Federally and State-chartered

Financial Institutions" (EMERGENCY) Committee on **Banking and Insurance** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-234)

(S.P. 547) (L.D. 1665) Bill "An Act to Amend the Charter of the Hebron Water Company" Committee on **Utilities and Energy** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-239)

(H.P. 950) (L.D. 1313) Bill "An Act to Amend Certain Laws Administered by the Department of Environmental Protection" Committee on **Natural Resources** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-491)

(H.P. 982) (L.D. 1362) Bill "An Act to Improve the Administration of Animal Welfare Law" Committee on **Agriculture, Conservation and Forestry** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-492)

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the Senate Papers were passed to be engrossed as amended in concurrence and the House Papers were passed to be engrossed as amended and sent up for concurrence.

(S.P. 574) (L.D. 1731) Bill "An Act to Amend the Election Laws" Committee on **Legal and Veterans Affairs** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-230)

On motion of Representative KONTOS of Windham, was removed from the First Day Consent Calendar.

The Committee Report was read and accepted. The Bill was read once. Committee Amendment "A" (S-230) was read by the Clerk.

On further motion of the same Representative, tabled pending adoption of Committee Amendment "A" (S-230) and later today assigned.

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment Friday, May 16, 1997, have preference in the Orders of the Day and continue with such preference until disposed of as provided by House Rule 502.

An Act to Make Technical Changes in the Laws Relating to the Sale of Alcoholic Beverages (S.P. 510) (L.D. 1572) (C. "A" S-182)

TABLED - May 15, 1997 (Till Later Today) by Representative KONTOS of Windham.

PENDING - Passage to be Enacted.

On motion of Representative KONTOS of Windham, tabled pending passage to be enacted and later today assigned.

Resolve, to Create a Task Force to Develop a Single Payment System for State and Federal Taxes for Small Businesses (H.P. 988) (L.D. 1368) (H. "A" H-416 to C. "A" H-240) TABLED - May 15, 1997 (Till Later Today) by Representative KONTOS of Windham.

PENDING - Final Passage.

On motion of Representative KONTOS of Windham, tabled pending final passage and later today assigned.

HOUSE DIVIDED REPORT - Majority (8) "**Ought to Pass**" as amended by Committee Amendment "A" (H-395) - Minority (5)