

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Seventeenth Legislature
OF THE
State Of Maine

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 24, 1995 to June 30, 1995

Representative FARNUM: Mr. Speaker, Men and Women of the House: I have studied Maine Yankee and Central Maine Power Company a year ago and I sold my stock.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is acceptance of the Minority "Ought to Pass" Report. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 158

YEA - Adams, Ahearne, Benedikt, Berry, Bigl, Bouffard, Brennan, Chartrand, Chase, Chizmar, Clark, Cloutier, Daggett, Davidson, Desmond, DiPietro, Dore, Etnier, Fisher, Fitzpatrick, Gamache, Gates, Gerry, Gould, Green, Hatch, Heeschen, Heino, Hichborn, Jacques, Johnson, Jones, K.; Joseph, Keane, Kerr, Kontos, LaFountain, Lane, Lemaire, Lemke, Look, Luther, Martin, Meres, Mitchell EH; Mitchell JE; Nadeau, Ott, Paul, Pouliot, Povich, Rice, Richardson, Ricker, Rosebush, Rotondi, Rowe, Samson, Saxl, J.; Saxl, M.; Shiah, Sirois, Spear, Stevens, Thompson, Townsend, Treat, Tripp, Truman, Tuttle, Tyler, Vigue, Volenik, Watson, Wheeler, Winn.

NAY - Aikman, Ault, Bailey, Barth, Birney, Buck, Bunker, Cameron, Campbell, Carleton, Chick, Clukey, Cross, Damren, Donnelly, Driscoll, Dunn, Farnum, Gieringer, Gooley, Greenlaw, Guerrette, Hartnett, Jones, S.; Joy, Joyce, Joyner, Kilkelly, Kneeland, Labrecque, Layton, Libby JD; Libby JL; Lovett, Lumbra, Madore, Marshall, Marvin, McAlevey, McElroy, Morrison, Murphy, Nass, Nickerson, Pendleton, Perkins, Pinkham, Plowman, Poirier, Poulin, Reed, G.; Reed, W.; Robichaud, Savage, Simoneau, Stedman, Stone, Strout, Taylor, True, Tufts, Waterhouse, Whitcomb, Winglass, Winsor.

ABSENT - Dexter, Lemont, Lindahl, Mayo, O'Gara, O'Neal, Peavey, Underwood, Yackobitz, The Speaker.

Yes, 76; No, 65; Absent, 10; Excused, 0.

76 having voted in the affirmative and 65 voted in the negative, with 10 being absent, the Minority "Ought to Pass" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-435) was read by the Clerk and adopted. The Bill was assigned for second reading Thursday, June 15, 1995.

House Divided Report - Committee on Banking and Insurance - (7) Members "Ought to Pass" as amended by Committee Amendment "A" (H-423) -(6) Members "Ought to Pass" as amended by Committee Amendment "B" (H-424) on Bill "An Act Concerning the Liability of Governmental Entities for the Use by Employees of Private Motor Vehicles" (H.P. 824) (L.D. 1155) which was tabled by Representative GATES of Rockport pending acceptance of either Report.

Representative VIGUE of Winslow moved that the House accept the Majority "Ought to Pass" as amended Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rockport, Representative Gates.

Representative GATES: Mr. Speaker, Men and Women of the House: I urge you to vote against the pending motion. I will speak briefly on this topic. What the bill before us does is when state employees use their own vehicles to run an errand on state business, the bill puts that employee's insurance company in front of the state in terms of liability. It says state employee's insurance is primary to the

state. In doing that it saves the state 1 million dollars or so.

However, what many of us on the committee thought was important was to make the state employee whole should an accident happen and should their insurance rates go up as a result. If we are going to ask the state employees to carry this bucket of water for the state and to put our house in order, all we were asking is that should something happen, should there be an accident, that the state would reimburse them solely for a couple of years for the increase only their premium attributed to that accident. It would totally be up to the state employee to prove that his premiums went up and if he was unable to prove that, he would go unreimbursed. The cost of doing that would only be about \$30,000.

We have an opportunity here to save 1 million dollars and we can either do that or we can save \$970,000 in a fair way by adopting the Minority Report. I am just concerned that, once again, we are spanking state employees to balance the books. I would urge you to vote no and adopt the Minority Report. I ask for a division.

Representative GATES of Rockport requested a division on the motion to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: What this bill actually does, L.D. 1155, is repeals the sunset of June 30, 1995. It allows state employees to continue doing business as they have in the past. If we don't continue doing business as we have in the past, then we could be looking at a cost to the state of at least \$500,000. You are looking at a fair amount of money. I think that we can continue as we have in the past and not have any problems at all. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rockport, Representative Gates.

Representative GATES: Mr. Speaker, Men and Women of the House: The good Chair is correct, however, the same result is achieved by the Minority Report. It simply doesn't do it on the backs of state employees. There will be huge saving with which ever report we adopt. I thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Holden, Representative Campbell.

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: This is a situation where we are creating a bad solution to a pretty basic problem. The very basic problem is we compensate our employees 22 cents a mile for mileage. The concern is that this does not cover such things as insurance or whatever. The solution that is proposed in the Minority Report is one that we don't want to travel down.

Therefore, the Majority Report is important to endorse. The solution that may be suggested is that we offer to pay employee's insurance over and above that typical increase after an accident, which is basically undeterminable, whose fault and so on. If we want to correct the solution, we should be paying our people the average 29 cents or whatever. We should increase the compensation per mile, not go down an avenue that creates a hole in the future where we start compensating employees for something other than is typical in the industry or from the IRS perspective. We don't want to be compensating people for insurance policies when, in effect, all we should

be doing is increasing the rate paid to our employees on a mileage basis. Therefore it is very important to endorse the Majority "Ought to Pass" and pass L.D. 1155. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose his question.

Representative WATERHOUSE: To the good Representative from Holden, Representative Campbell. Am I hearing this correct? If a state worker gets involved in an accident and it is his fault and his insurance premiums go up, this bill would require his insurance premiums raise to be paid by the state?

The SPEAKER PRO TEM: The Representative from Bridgton, Representative Waterhouse has posed a question through the Chair to the Representative from Holden, Representative Campbell. The Chair recognizes that Representative.

Representative CAMPBELL: Thank you Mr. Speaker. Yes, that is correct. The increase in rate is then paid for by the state.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Pittston, Representative Guerrette.

Representative GUERRETTE: Mr. Speaker, Ladies and Gentlemen of the House: This is a bill that I put in for the bureau. This bill was basically put in because if we did not repeal the sunset that would have come into effect in July of this year, the state would have had a half a million dollar liability. Also, local municipalities would have had between a half a million and 1 million dollar liability. The sunset, if it is not repealed, will cause local school districts, towns, county government and the State of Maine to become primarily responsible for the auto insurance for their employees when they are on company business, even though they are already reimbursed for the miles.

This is a policy that would lead the state on a very dangerous road to start reimbursing them for their automobile insurance. No other state reimburses for this. The federal government does not reimburse for this. With the research I have done, I have found no entity anywhere in the world that does this. We would be the first state ever to do this kind of thing. If we choose to pass this bill, we will be saying if you are in an accident while you are on state time and it is your fault, we are going to pick up the increase in your premium. If you want to be really magnanimous, maybe you want to do that. That might be fine if that person hasn't had an accident in the last 20 years and so their insurance premium goes up \$100. What if that person has had five accidents in the last one year? What do you think the next accident they have is going to do to their premium.

We are going to ask the taxpayers of the State of Maine to pick up that cost, if we vote for the Minority Report as Representative Gates has said. We are going to say to the taxpayers of the State of Maine, you are going to pick up the insurance increase for this state worker, even though the state worker was at fault. This is a very, very bad policy. It opens a can of worms that there is no way the department supervisor can figure out what this increase can be. There is no way of determining it

fairly. It will open a can of worms that no other entity anywhere ever has done. The private sector does not do this. If you vote for the Majority Report, we will be leaving the sunset on this bill and saving the state taxpayers a half million dollars and your local municipalities between a half million and a million dollars. I urge you to support the Majority "Ought to Pass" Report. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Freeport, Representative Hartnett.

Representative HARTNETT: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose his question.

Representative HARTNETT: Thank you Mr. Speaker. Actually I would like to pose three questions. Is there any time limit imposed for how long the state would be liable for this increase in insurance? Would it continue after an employee has left the employ of the state? Also, is it regardless of fault? I think I am hearing that the fault of the accident doesn't seem to come into play. Since legislators get reimbursed for mileage, can we get in on this?

The SPEAKER PRO TEM: The Representative from Freeport, Representative Hartnett has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Pittston, Representative Guerrette.

Representative GUERRETTE: Thank you Mr. Speaker. Yes, as a state employee you are on state time. You can get in on this gravy train. Understand that what we are talking about getting in on is not the motion before us, that would be the Minority Report. The Majority Report simply protects Maine state taxpayers and does not head down that path. While you are a state employee, you will be reimbursed for three years of the rate increase of your insurance. Please accept the Majority Report that will not cause these problems and will save taxpayers a lot of money. Ladies and gentlemen of the House, another one of his questions was the fault issue. Yes, if it is your fault the state will still pick up the tab. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from China, Representative Chase.

Representative CHASE: Mr. Speaker, Ladies and Gentlemen of the House: I realize, we are not as the good Representative, Representative Guerrette has said, debating the Minority Report. Lets stick to the Majority Report. Representative Campbell has suggested that, in fact, the real solution would be to raise the reimbursement level to state employees to 29 cents per mile. However, neither that good Representative nor anyone on the Banking and Insurance Committee nor anyone on the Majority Report offered that solution. Lets not talk about that solution either. Lets talk about what is before us.

We all want to save the state a lot of money. We all want to save the state the \$500,000. The problem with simply accepting the Majority Report is perhaps the inverse of what has been suggested as the problem with suggesting the Minority Report. That is if I am a state employee and I am sent on an errand to the State House to pick something up or drop something off and I am sitting in my car and I am involved in an accident, it is not my fault, if my insurance increases as a result of x number of accidents because I am doing my job, I have to pay for that. Those of us who did not accept the Majority Report

thought that was simply not the way to do business. Representative Guerrette has reminded us that he does not know of another state that does business this way. I might suggest that other states take primary responsibility for the insurance of their employees. With that, I urge you to reject the Majority Report so then we can go onto discuss the Minority Report and support that. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Lumbra.

Representative LUMBRA: Mr. Speaker, Ladies and Gentlemen of the House: There was something that was left out here. What has been left out is that the state worker has the option to use a car in the pool. It isn't that they have to use their vehicle. The other thing that is left out is we have heard many, many times on the floor the word parity. What we are talking about here is true parity. If I worked anywhere else, but for the state and I used my vehicle for an errand and I got in an accident, that would be up to me to pay the increase in premium. I wouldn't have the privilege of my employers picking up the increase in premium. It is definitely not balancing the budget on the backs of state workers.

The other thing is we have a whole lot of problems with this if we don't support the Majority "Ought to Pass". The problems are if a state worker gets in an accident, we haven't defined, OUI and negligence. Still the state has to pick up the increase in premium for three years. The other thing is what if you get into an accident and you total your car, you have a Yugo and you buy a Lincoln, you have a significant increase in premium. To come up with what the increase was based on the accident and to get that formula would be virtually impossible. There are too many things that come into play that increase insurance premiums. I would just ask you to support the Majority "Ought to Pass". Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Saxl.

Representative SAXL: Mr. Speaker, Ladies and Gentlemen of the House: The good Representative from Pittston, Representative Guerrette suggested that no other state in the country provided immunity for their state employees. May I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose his question.

Representative SAXL: Thank you Mr. Speaker. Is it true that police officers in the State of Maine and public works people in the State of Maine are given this immunity from liability and are covered by the state.

The SPEAKER PRO TEM: The Representative from Portland, Representative Saxl has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Holden, Representative Campbell.

Representative CAMPBELL: Thank you Mr. Speaker. Yes, in fact, that is true. Again, different situations. We feel they are in a more precarious situation than an employee traveling back and forth on an errand. These people who are placed in high risk situations are, in fact, covered under similar programs.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Saxl.

Representative SAXL: Mr. Speaker, Ladies and Gentlemen of the House: The minority of the committee agrees with Representative Campbell from

Holden. We agree that the state should not be liable for every action of the state worker. We believe that the state should be immune from this action. What we are merely asking is that the state consider that while the state worker on state time doing the state's business has an accident. If they are sitting at a stop light and someone rams them from the side and that is the cause of their increase in premium, for this period of three years and only that time, that will be compensated. This is a \$30,000 answer to a potentially 1.2 million dollar problem. We think this is a good deed for the state taxpayers to save their money. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Lumbra.

Representative LUMBRA: Mr. Speaker, Ladies and Gentlemen of the House: I just want to clarify what we are talking about when the police officers are exempted. What it is is no insurer may increase the premium for a personal insurance policy providing motor vehicle liability or collision insurance to a public works employee on the basis of one or more accidents involving the motor vehicle operator by that employee. It is simply that if they are on the job that their personal insurance company can't increase the premium for the police officers. This is very discriminatory, if the Minority Report was passed, because we didn't see fit to include school districts or municipalities. This is strictly for the state worker reimbursement. It is totally discriminatory.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Pittston, Representative Guerrette.

Representative GUERRETTE: Mr. Speaker, Ladies and Gentlemen of the House: I just want to clarify a couple of points. I will try to be brief. This has gone on too long and I apologize. If someone is rammed from the side sitting at a stop sign, their rates will not increase. They are not at fault. Number two, no other state in this nation does this as Representative Chase intimated. No other state takes primary responsibility for insurance. That is not true. We would be the first. Number three, the state does not reimburse police officers if they are in an accident. The state has made a law that says to insurance companies you may not raise the rates of that employee of the state. The state does not reimburse those employees of the state. I just want to clarify some misunderstandings that may have been there. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Yarmouth, Representative Buck.

Representative BUCK: Mr. Speaker, Men and Women of the House: It seems to me if we are going follow the logic of those who advocate this position that perhaps we should amend this bill to include that when public employees take their work home in the evening then perhaps we should include paying part of their home owners insurance policy as well.

The Chair ordered a division on the motion to accept the Majority "Ought to Pass" as amended Report.

Representative CHASE of China requested a roll call on the motion to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER PRO TEM: 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 members present and voting. All 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 PRO TEM: The Chair recognizes the Representative from Freeport, Representative Hartnett.

Representative HARTNETT: Thank you Mr. Speaker, Ladies and Gentlemen of the House: I asked the question earlier about whether this applies to legislators. For those of you who came into the room late, I want you to know that it does. You are about to vote yourself another benefit on top of the wonderful medical coverage, dental, mileage, meals allowance, housing allowance and I can think of three members of this body who would love retroactivity on this motion.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is acceptance of the Majority "Ought to Pass" Report. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 159

YEA - Aikman, Ault, Bailey, Barth, Benedikt, Bigl, Birney, Bouffard, Buck, Cameron, Campbell, Carleton, Chick, Clukey, Cross, Damren, DiPietro, Donnelly, Dunn, Farnum, Gamache, Gieringer, Gooley, Greenlaw, Guerrette, Hartnett, Heino, Hichborn, Jones, S.; Joy, Joyce, Joyner, Kneeland, Labrecque, Lane, Layton, Libby JL; Look, Lovett, Lumbra, Madore, Marshall, Martin, Marvin, McAlevey, McElroy, Meres, Murphy, Nass, Nickerson, O'Gara, Ott, Pendleton, Perkins, Pinkham, Plowman, Poirier, Reed, G.; Reed, W.; Rice, Ricker, Robichaud, Savage, Simoneau, Spear, Stedman, Stone, Strout, Taylor, True, Tufts, Underwood, Vigue, Waterhouse, Wheeler, Whitcomb, Winglass, Winsor.

NAY - Adams, Ahearne, Berry, Brennan, Bunker, Chartrand, Chase, Chizmar, Clark, Cloutier, Davidson, Desmond, Dore, Driscoll, Etnier, Fisher, Fitzpatrick, Gates, Gerry, Gould, Green, Hatch, Heeschen, Jacques, Johnson, Jones, K.; Joseph, Keane, Kilkelly, LaFountain, Lemaire, Lemke, Luther, Mitchell EH; Mitchell JE; Morrison, Nadeau, Paul, Poulin, Povich, Richardson, Rosebush, Rotondi, Samson, Saxl, J.; Saxl, M.; Shiah, Stevens, Thompson, Townsend, Treat, Tripp, Truman, Tuttle, Tyler, Volenik, Watson.

ABSENT - Daggett, Dexter, Kerr, Kontos, Lemont, Libby JD; Lindahl, Mayo, O'Neal, Peavey, Pouliot, Rowe, Sirois, Winn, Yackobitz, The Speaker.

Yes, 78; No, 57; Absent, 16; Excused, 0.

78 having voted in the affirmative and 57 voted in the negative, with 16 being absent, the Majority "Ought to Pass" as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-423) was read by the Clerk and adopted. The Bill was assigned for second reading Thursday, June 15, 1995.

HOUSE DIVIDED REPORT - Majority (7) "Ought to Pass" as amended by Committee Amendment "A" (H-289) - Minority (5) "Ought Not to Pass" - Committee on Utilities and Energy on Bill "An Act Regarding Cable Television" (H.P. 831) (L.D. 1162) which was tabled by Representative MITCHELL of Vassalboro, pending the motion of Representative KONTOS of Windham to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Windham, Representative Kontos.

Representative KONTOS: Mr. Speaker, Men and Women of the House: This amended version that is the Majority Report deletes all sections of the bill, but the first one, which is and I am going to read it so you don't have to scramble to find it in your notebook.

A municipality may require any company providing cable television services to pay reasonable fees to the municipality based upon a percentage of gross receipts in that municipality to the extent consistent with applicable rules and regulations of the Federal Communications Commission, as amended.

This is permissive language. Some of you may have heard from your access companies in your towns who very much want to have this language in statutes that allows them to enter these negotiations. I urge you to support the Majority Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Cumberland, Representative Taylor.

Representative TAYLOR: Mr. Speaker, Men and Women of the House: This is another bill that started out in one direction and has ended up a shadow of its original self. There were several good ideas in the bill that was originally contemplated to counteract the failed attempt of Time Warner to require scramblers in all the greater Portland area. As often happens, public opinion took care of the problem before we could get at it and three of the four sections of the bill were deleted. The fourth merely gives your communities the same right that they have and have exercised up to this point. The bill is no longer applicable and I would recommend that you would vote against the motion "Ought to Pass" and put this bill away as not being necessary.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Adams.

Representative ADAMS: Mr. Speaker, Men and Women of the House: I would urge you not to put the bill to sleep just yet. It didn't ask to be and it is wide awake and very happy to be walking around on its own two feet, thank you.

As sponsor of the bill, I will assure you that it may have been born out of difficulties faced in certain parts of Maine and by far have those things not yet gone to bed either. Right now those things are being decided in other forums and will no doubt be coming back to us again. Your local cable company tries to pull some of the same monkey shins most of southern Maine experienced last fall. In which, thanks to the good intercession of Senator Olympia Snowe we were able to catch at the moment until they rear their head again.

Therefore it is important that your local cable access channels, which are run by your neighbors usually as volunteers, still maintain the right to run the channel that is going to broadcast your local ball games, your local city or town councils, local town meeting, local planning board meeting, local school board meetings, etc. In the new world of new methods of delivering the media, not all of it through a cable necessarily anymore, but through other ways that we haven't yet thought of. It is important that they have that right to negotiate those channels and to make sure that they can maintain that broadcast in all of those medians.

That is what this piece of the bill does and that is what we would like to have your communities know we care enough about to pass and maintain in law. I am sure you will hear more about the rest of those other things next session, but that is all this one