

# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

## **One Hundred And Fifteenth Legislature**

OF THE

## **State Of Maine**

### **VOLUME VII**

#### **SECOND REGULAR SESSION**

Senate

March 10, 1992 to March 31, 1992

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#### **HOUSE AND SENATE LEGISLATIVE SENTIMENTS**

December 5, 1990 to December 1, 1992

ONE HUNDRED AND FIFTEENTH MAINE LEGISLATURE  
THIRD SPECIAL SESSION  
4th Legislative Day  
Monday, October 5, 1992

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

Prayer by the Honorable Herbert C. Adams, Portland.

Pledge of Allegiance.

The Journal of Saturday, October 3, 1992, was read and approved.

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 8 was taken up out of order by unanimous consent:

**SENATE PAPER**

**Non-Concurrent Matter**

Bill "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws" (EMERGENCY) (H.P. 1783) (L.D. 2464) which was passed to be engrossed as amended by House Amendments "B" (H-1339) and "C" (H-1340) as amended by House Amendments "E" (H-1350) and "H" (H-1356) thereto in the House on October 3, 1992.

Came from the Senate passed to be engrossed as amended by Senate Amendment "D" (S-801) in non-concurrence.

Representative Erwin of Rumford moved that the House recede.

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

Representative MARSANO: Mr. Speaker, Men and Women of the House: I hope that the House will not recede at this point in time. I hope the House will see fit to recede and concur with the action of the other body which will place before this body a chance to vote on the bill as amended by the Blue Ribbon Commission Report. The easiest way for us to do that is to defeat the pending motion and I urge the House to do that.

We have all been involved in this matter for quite some period of time. I think the purpose of the Representative from Rumford is to present a slightly different version of a matter which has been discussed at great length both by this House and by the Blue Ribbon Commission. I can only urge the House at this time that the easiest thing for us to do is recede and concur to the wisdom given to us by the other body.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Members of the House: I urge the members of the House to vote to recede so that I may present an amendment.

Representative Macomber of South Portland

requested a roll call vote.

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 Representative Erwin of Rumford that the House recede. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 479

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Duffy, Dutremble, L.; Erwin, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gurney, Gwadosky, Hale, Handy, Heesch, Hichens, Hoglund, Holt, Hussey, Jalbert, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, Michael, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tamaro, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichborn, Kutasi, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Michaud, Murphy, Nash, Norton, Ott, Parent, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Spear, Stevens, A.; Stevenson, Tupper, Whitcomb.

ABSENT - Clark, M.; Dore, Farnsworth, Jacques, McKeen, Paul, Rand.

Yes, 88; No, 55; Absent, 7; Vacant, 1; Paired, 0; Excused, 0.

88 having voted in the affirmative and 55 in the negative with 7 being absent and 1 vacant, the motion did prevail.

Representative Erwin of Rumford offered House Amendment "P" (H-1369) and moved its adoption.

House Amendment "P" (H-1369) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Men and Women of the House: On October 2nd, I offered House Amendment "B" and this House Amendment "P" adds further clarification to that amendment. The Statement of Fact says, "This amendment ensures that a United States Veteran who has served in the Armed Forces of the United States during any federally recognized period of war or conflict and who has a service-connected disability is not penalized under the Maine Workers' Compensation Act of 1992 by that service-connected disability." It eliminates from the measure of disability any disability resulting from a service-connected condition. We haven't had a

declared war since World War II but have had many conflicts such as Korea, Vietnam, Desert Storm and many others. Three days ago, this House voted 84 to 58 for House Amendment "B" and I urge your continued support for this amendment.

Mr. Speaker, I request a roll call.

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 Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: The good Representative from Rumford reminded this body that we have seen this amendment before, that this amendment, following the various votes in the two bodies, has gone to the Blue Ribbon Commission, as did all the other amendments that were adopted in the two bodies. The Blue Ribbon Commission looked at the substance of this amendment as they had looked at it before and concluded that that is not a part of what they felt should be the package for legislative consideration at this time.

What it really boils down to, as it has in previous votes, is whether we are willing to accept the work of an outside commission, a bipartisan commission of two Republicans and two Democrats, to tackle a problem that we have yet to reach any agreement on either between the parties in this body or between the two bodies.

I am sure that those of you who have had a chance to go home and talk to your friends and neighbors as I did today, the people of Maine are really waiting for the results of our work. It was interesting for me to hear from the people who are affected by this piece of legislation, the support they have for an outside group's report. I think it is practically unprecedented to have such an overwhelming amount of support for an item that has been before the legislature.

We were called into session to address the subject on the 1st. We labored through the 2nd, into the night of the 3rd and now it is the night of the 5th day of October. This amendment before us is like many others and I suppose there could be even more considered if that is the will of some.

The Blue Ribbon Commission has asked us to put a stop to the process of continually tinkering with the report and to vote up or down. If you read the intent of the legislation that we passed last spring, that was what we said we would do.

A vote on this amendment or any other amendment is a vote as to whether we want the report of the Blue Ribbon Commission to be passed with its flaws (and there probably are many) and presented for the people of Maine so they can get on with their lives in their workplace of both those who employ people and those who work. We will again vote for what is obviously a very popular special interest but it is time we began to resist the attempts of those who simply want to keep whittling away, chipping away as my seatmate suggests, at a report that was reached in bipartisan fashion, a manner that we could not reach.

I urge rejection of this amendment simply for the fact that it takes us a step backwards in a process

of eventually having a piece of legislation available for the people of Maine so they can continue on with their lives.

The SPEAKER: The Chair recognizes the Representative from Norway, Representative Bennett.

Representative BENNETT: Mr. Speaker, Friends and Colleagues of the House: I have sat here during House Amendment "B" and now during the debate on House Amendment "P" and suggested that this amendment is in some way to help protect our veterans from being penalized by the Workers' Comp bill — the term penalized is used here rather loosely. I have heard it used, not only in the Statement of Fact here, but by Representative Erwin on the floor tonight. Penalized implies that someone is more poorly treated or treated worse by the Blue Ribbon Commission's bill than the regular normal typical person under the bill. My concern is that just the opposite would occur, that by giving this generous benefit, by treating the veteran in a different way than you would be treating other people in a more generous way than you would be treating other people under the bill, that that veteran is going to perhaps suffer in some marginal cases against employment in the hiring practices exercised by some businesses that some of the members of this body have expressed concern about in the past.

I would ask (through the Chair) Representative Erwin how she comes by the term penalized and what exactly she means by it?

The SPEAKER: Representative Bennett of Norway has posed a question through the Chair to Representative Erwin of Rumford who may respond if she so desires.

The Chair recognizes that Representative.

Representative ERWIN: Mr. Speaker, I am sorry, I didn't hear the question.

The SPEAKER: The Chair would ask Representative Bennett of Norway to restate his question.

The Chair recognizes that Representative.

Representative BENNETT: Mr. Speaker, Men and Women of the House: My question is, how the Representative from Rumford comes by the term penalized in her remarks and in the Statement of Fact on this amendment? How is a person suffering from a service-connected condition penalized under the Workers' Compensation bill?

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: To respond to that question, the law, as drafted, requires a much higher standard of proof if the injured person has any type of preexisting condition. It is unfair because clearly any veteran with a service-connected disability will have a preexisting condition.

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

Representative PINEAU: Mr. Speaker, I would like to pose a question through the Chair to Representative Bennett of Norway. My question is, in your statement, why would this body want to treat the veterans more generously or treat them worse like we treat everybody else by the bill, I don't understand that part at all and I wish he would clear that up.

The SPEAKER: Representative Pineau of Jay has posed a question through the Chair to Representative Bennett of Norway who may respond if he so desires.

The Chair recognizes that Representative.

Representative BENNETT: Mr. Speaker, Friends and

Colleagues of the House: I believe that this amendment as drafted encourages a policy of discrimination by potentially treating people with service-connected conditions in a more generous fashion than the typical person with a previous condition.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: To use the expression of a leader of ten or twelve years ago of the opposition party, "Here we go again." As the good gentleman from Waldo said, we are taking a popular stand. I don't realize and I wasn't aware that the Korean War or Vietnam War was a popular stand in this country. Those young men and women stepped off the plane after the Vietnam War and they were spat on. When I came out of World War II, we weren't spat on, but there was a lot of resentment that many men were coming back and asking for their old job back.

Mark my words, this has nothing to do with the veterans per se. This is one way that started way back in the Reagan days, let's get this group and that group and break it down. First Reagan went after the fellows that take care of the planes as they come in, he broke that union. Mark my words, if this puts the veterans back on their feet and takes them out of the way, the next thing you know, any woman who works and gets hurt in the workplace, they will come back and say five years ago, you had a miscarriage; therefore we must deduct certain benefits.

This is a subterfuge to try to take the benefits away from the workers. Many of you people are much younger than I am, but I remember the days of Herbert Hoover where the working man was nothing but dirt. I know of instances — at least one good friend of the family who lost an arm in the rumble mill in Lisbon Falls ended up with \$500 and a food basket. That is the way things were worked. They are trying to take the working man and put him under their thumb. This is just one little part of it. This has nothing to do with the veterans.

Furthermore, they keep talking about World War II and all of that, I am the youngest group that came out of World War II and I am sure as heck will not take anything out of Workers' Comp because I am beyond working.

Let's talk about the Korean veterans and the Vietnam veterans and Desert Storm. What this does is, if a young man who was serving in Saudi Arabia or Kuwait should come up with some kind of disability and gets a partial compensation for it, (of which he had no control) and say he lost part of his foot and gets partial compensation, later on, that same young man or young lady should be working and should have a heart attack at work, they will say that was caused by the disability that you got in Saudi Arabia. What is any young man who has been hurt in Saudi Arabia, Vietnam or Korea got to do with your working now?

Let's not be fooled now. Mark my words, I may not be sitting in this body, but within two years, (and I think the ladies of the House should remember this) they will go back on the women in the working force and say you had a problem five years ago indirectly and you have to be cut back.

I ask again, support this amendment.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Richards.

Representative RICHARDS: Mr. Speaker, Ladies and

Gentlemen of the House: I am a veteran myself, I served during the Vietnam war and I can only relate to that experience. I can hear the arguments of Representative Jalbert, Representative Erwin, and I listened to Representative Clark's arguments last time when he presented "B" but I am tossed between the fact that I come from a period of time where PTSD, Post Traumatic Stress Syndrome was something that was very big as a result of the Vietnam war and the type of action that was fought over there. I am tossed between the fact that you have somebody that is an amputee that walks on a job that has a bunch of other associated problems with the back that is equally a good a candidate as a person without that loss of leg and that employer knows that perhaps he is going to buy the whole injury.

One of the most important things for our Vietnam veterans coming out of that war with PTSD and other associated injuries is a job. What I am tossed between is the fact that they will be discriminated against, not directly that you are a veteran. I know the new law and you are not going to get the job. Obviously, they would have a human rights action brought against them. But as you all know in the workplace, people discriminate and call that good judgment by saving money.

PTSD is an illness that Vietnam veterans serve in all different degrees, percentages, ten percent, fifty percent, ninety percent. The fact of it is that you may have a job as a CPA, be 30 percent PTSD disabled, and because of the stress of that job during tax time, it may lead you into a relapse, a Workers' Compensation injury — you bought the whole injury. Any smart employer that knows it out there and knows what this bill potentially could do with this amendment, I fear the fact that the very thing that veterans need most, a job, they will lose.

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

Representative RUHLIN: Mr. Speaker, Men and Women of the House: I regret that I will be opposing this amendment this evening. I did vote for it Saturday. I have heard the discussion tonight, I find it very interesting. However, I have checked the bill, the proposed legislation before us, and have found no discernable opportunity for discrimination either for or against veterans in that bill. It quite simply says in the proposed legislation that the existence of a preexisting condition is a factor in determining whether the employment contribution is significant. However, under current case law and the proposal in the L.D., the issue to be determined is whether the employment creates an additional risk to the employee. The existence of a preexisting condition is not really part of that determination. Consequently, considering that and considering the fact that it is a federal benefit when a service-connected disability is involved and there is no off-set involved with Workers' Comp, I will be opposing this amendment.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Macomber.

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: I will be very, very brief. I am not going to quote you any statistics, any figures or anything of that sort. I am just going to ask you to consider who you are talking about.

Representative Bennett said that perhaps no group should be treated differently than the other. I

think that is perhaps where I differ with him. I think you are talking about a group that in the 12 years that I have been here I have never had them out in the lobby twisting my arm or anything else. They have come here with some requests, very politely, very quietly have talked with some of us and I think perhaps they have been very gentlemanly about the whole thing. I just want to remind you that these are the people who made it possible for many of us to be able to stay home, be warm, well fed, and safe. I don't think they are people who should be penalized in any way.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, I would like to pose a question through the Chair.

My question is to Representative Erwin from Rumford. We have heard eloquently from Representative Macomber about who veterans are. We have heard from Representative Ruhlin that there is nothing for or against, as far as preferential treatment for veterans or others in this bill. Because we are a body that represents the people of the State of Maine my question would be, are veterans groups aware of this amendment and do veterans groups support this amendment?

The SPEAKER: Representative Joseph of Waterville has posed a question through the Chair to Representative Erwin of Rumford who may respond if she so desires.

The Chair recognizes that Representative.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: I am very pleased to respond to that question and I am glad it was asked.

Last night, we had a large meeting of Legionnaires in Rumford and they all, unanimously, favor this. And, in addition to that, the Veterans' Coordinating Committee, which is a committee that has membership from the American Legion, the Veterans of Foreign War, the Disabled Veterans and others, unanimously endorse this amendment. I just want you to know that they do favor it. I know that there are words going around that perhaps the veterans didn't know anything about this, they certainly do.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, Men and Women of the House: I want to remind the body that we are not here to take marching orders from the Blue Ribbon Commission. We each took an oath of office to use our own best judgment in the service of our constituents and no pledge ever relieves any of us of the burden of doing no harm. If we cannot do good, and I don't see how with this bill we can do good, we must at the very least do no harm. This amendment prevents harm being done to veterans. I am very happy to support Representative Erwin from Rumford on this amendment.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: I am very proud that the State of Maine is one of the few states in the country who have so much respect for their veterans. We are one of the few states that has established a veterans cemetery, which is located right here in Augusta. We have, at present, three veterans' nursing homes and they are now negotiating to build two more. We have said to the veterans, we do recognize your position. We didn't do like other

states that in 1946 said, we will give you a \$200 bonus. I am not complaining because when I came out of the service a grateful nation said, you have served your country well, we will now give you an education and for that I shall be eternally grateful.

Let us now not turn around and because of expediency and because some actuary or some Blue Ribbon Commission said — I repeat what I said yesterday, if the Blue Ribbon Commission did such a great job, came out with such a great document, the Lord could have done a lot if He had the Blue Ribbon Commission on His side. That is all I have heard for two days, I think I will do away with the Bible and turn to the Blue Ribbon Commission to give me the answer I need.

We have a small group here, men and women who have done their duty and have served their country, some never came back, there are widows out there, we even talked about men who have not come back and who have not been accounted for in Vietnam — are we now to say to these people, we will turn around and punch the computer and say I am sorry that because you are getting so much when you lost a foot in Vietnam, now that you had a heart attack while working or fell off the staging, we will cut you back. If we are at that stage in the State of Maine and the insurance companies are so worried that we have to take it away from the veterans, it is a sad state of affairs. If the next war comes along, (I hope we never get one) you will have more and more young men and women who will refuse to serve. If this is the way we are going to treat them, I think we are in bad shape.

I would ask again, let your conscience guide you, what duty do we owe? I am serving here as the Representative from my town at a time when I wonder if it is worth it but I feel the good Lord gave me the ability to serve and I have a duty to serve. We have a duty to live up to our responsibility to our young men and young women who decided this country was worth fighting for.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative Melendy.

Representative MELENDY: Mr. Speaker, Men and Women of the House: I think I am a bit offended to hear Representative Jalbert in his discussion. Because I voted no does not mean that I do not support my veterans. As a matter of fact, the reason I am voting no is because I think it is time that we compromised. I think it is time that we passed this piece of legislation. Workers' Comp continues to come before us time and time again and is always pulling in two different directions. Well, I am concerned about those veterans that will come back whether they are handicapped or not handicapped and there will be no jobs waiting for them because there are many businesses in this state that are desperate for this bill.

I urge you to think about it and we will come back later in January or February and address this problem of the veterans but right now, let's pass this bill.

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

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: In the L.D. on Page 26, Part 4 of Section 201 explains what preexisting conditions, "If a work-related injury aggravated or accelerates or combined with a preexisting physical condition or resulting disability is compensable only if contributed by the employment in a significant

manner." That means, if you have a preexisting injury or disability, if during the course of your work you have another injury, then they have to consider what is significant in the combination and who is going to make that determination? It is the IME who is the God Almighty, who is more than likely (in my opinion) be a doctor who has no practice, can't function, cannot be depended upon but he is going to be hired as an IME. He or she is the one that is going to determine if there is enough significant portion of that injury is related to work. If it is not significant, they won't pay it under Workers' Compensation. That is what it says to me.

I believe Representative Erwin's amendment is a good amendment. I don't intend to support the bill and everyone knows that but anything to make this bill a better bill, I will support.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Greenlaw.

Representative GREENLAW: Mr. Speaker, Ladies and Gentlemen of the House: I did not intend to speak today but I was asked if I wanted to speak on this subject and I refused.

I happen to be a veteran of World War II and every day you look around your neighborhood, there's less of us. It may be a good thing, I don't know, but I want to tell you, Representative Jalbert and other people, I became a veteran to make a level playing field for the people in this world. This debate tonight is almost disgusting.

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "P" (H-1369). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 480

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Cote, DiPietro, Duffy, Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gurney, Hale, Handy, Heeschen, Hichborn, Hogle, Holt, Hussey, Jalbert, Joseph, Kerr, Ketterer, Kilkelly, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, O'Dea, Oliver, Paradis, J.; Paradis, P.; Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Rydell, Saint Onge, Sheltra, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tamaro, Townsend, Tracy, Treat, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Coles, Constantine, Crowley, Daggett, Donnelly, Dore, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hepburn, Hichens, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pfeiffer, Pines, Reed, G.; Reed, W.; Richards, Ruhlin, Salisbury, Savage, Simonds, Small, Spear, Stevens, A.; Stevenson, Tardy, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Clark, M.; Jacques, Paul.

Yes, 75; No, 72; Absent, 3; Vacant, 1; Paired, 0; Excused, 0.

75 having voted in the affirmative and 72 in the negative with 3 being absent and 1 vacant, the motion

did prevail.

The SPEAKER: The pending question before the House is passage to be engrossed as amended.

Representative Whitcomb requested a roll call on engrossment.

On motion of Representative Gwadosky of Fairfield, the House reconsidered its action whereby House Amendment "B" (H-1339) was adopted.

The same Representative moved that House Amendment "B" (H-1339) be indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is now in conflict with the amendment that the House just put on and I would urge the members to indefinitely postpone this amendment at this time.

Subsequently, on motion of Representative Gwadosky of Fairfield, House Amendment "B" (H-1339) was indefinitely postponed.

On motion of Representative Gwadosky of Fairfield the House reconsidered its action whereby it voted to adopt House Amendment "C" (H-1340) as amended by House Amendments "E" (H-1350) & "H" (H-1356) thereto.

On further motion of the same Representative, the House reconsidered its action whereby House Amendments "E" (H-1350) to House Amendment "C" (H-1340) was adopted.

On further motion of the same Representative, House Amendment "E" (H-1350) to House Amendment "C" (H-1340) was indefinitely postponed.

On further motion of the same Representative, the House reconsidered its action whereby House Amendment "H" (H-1356) to House Amendment "C" (H-1340) was adopted.

On further motion of the same Representative, House Amendment "H" (H-1356) to House Amendment "C" (H-1340) was indefinitely postponed.

The same Representative moved that House Amendment "C" (H-1340) be indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: Senate Amendment "D" that is currently on the bill encompasses the provisions that were in "C" as amended by "E" and "H" and I would encourage you to vote to indefinitely postpone "C" as amended by "E" and "H."

Representative Michaud of East Millinocket requested a roll call.

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

Representative PINEAU: Mr. Speaker, I would like to pose a question through the Chair, please.

Does Senate Amendment "D" now on the bill have a provision in it for the Labor/Management Board of Directors to study the legal side, the access to a legal counsel for injured workers if this bill does become enacted?

The SPEAKER: The Representative from Jay, Representative Pineau, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I would be happy to respond to that, the answer of course is no. We discussed that in caucus, there is a difference between "D" and

obviously the previous "C" as amended by "E" and "H." Certainly if it is the will of this body to keep this House Amendment "C" as amended by "E" and "H" on the bill, it is my understanding as I look at the bill, it is going to be in conflict with "D" that doesn't mean that we can't still pass it and send it back to the other body and see what happens. If that is the mood of this chamber to in fact send this bill back to the other body in the state of non-concurrence, then I would suggest we vote against the motion to indefinitely postpone.

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 Fairfield, Representative Gwadosky, that House Amendment "C" (H-1340) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 481

YEA - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hepburn, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Martin, H.; Melendy, Merrill, Michael, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Salisbury, Savage, Sheltra, Simonds, Skoglund, Small, Spear, Stevenson, Strout, Tammaro, Tardy, Tupper, Vigue, Waterman, Whitcomb.

NAY - Adams, Cahill, M.; Chonko, Clark, H.; Duffy, Erwin, Farnsworth, Goodridge, Gurney, Hale, Handy, Heeschen, Hichborn, Hichens, Hoglund, Holt, Hussey, Jalbert, Lerman, Luther, Macomber, Mahany, McHenry, McKeen, Michaud, Mitchell, J.; O'Dea, Oliver, Paradis, J.; Pineau, Powers, Rand, Richardson, Rotondi, Rydell, Saint Onge, Simpson, Stevens, A.; Stevens, P.; Swazey, Townsend, Tracy, Treat, Wentworth.

ABSENT - Clark, M.; Jacques, Paul, The Speaker.  
Yes, 102; No, 44; Absent, 4; Vacant, 1;  
Paired, 0; Excused, 0.

102 having voted in the affirmative and 44 in the negative with 4 being absent and 1 vacant, the motion did prevail.

Subsequently, House Amendment "D" (S-801) was read by the Clerk and adopted.

The SPEAKER: The pending question before the House is passage to be engrossed as amended by Senate Amendment "D" (S-801) and House Amendment "P" (H-1369) thereto in non-concurrence.

Representative Whitcomb of Waldo requested a roll call.

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 passage to be engrossed as amended by Senate Amendment "D" (S-801) and House Amendment "P" (H-1369) in non-concurrence. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 482

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Carroll, D.; Cashman, Cathcart, Coles, Constantine, Cote, Daggett, DiPietro, Dore, Duffy, Erwin, Gean, Gould, R. A.; Graham, Gray, Gurney, Gwadosky, Hale, Holt, Jalbert, Joseph, Kerr, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Macomber, Manning, Martin, H.; Melendy, Michael, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nutting, O'Gara, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Richardson, Ricker, Rotondi, Ruhlin, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Strout, Tammaro, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Cahill, M.; Carleton, Carroll, J.; Chonko, Clark, H.; Crowley, Donnelly, Duplessis, Dutremble, L.; Farnsworth, Farnum, Farren, Foss, Garland, Goodridge, Greenlaw, Handy, Hanley, Hastings, Heeschen, Heino, Hepburn, Hichborn, Hichens, Hoglund, Hussey, Ketterer, Kutasi, Lebowitz, Lerman, Libby, Lipman, Look, Lord, Luther, MacBride, Mahany, Marsano, Marsh, McHenry, McKeen, Merrill, Michaud, Murphy, Nash, Norton, O'Dea, Oliver, Ott, Parent, Pendexter, Pendleton, Pines, Powers, Rand, Reed, G.; Reed, W.; Richards, Rydell, Salisbury, Savage, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Swazey, Tupper, Whitcomb.

ABSENT - Clark, M.; Jacques, Paul, The Speaker.  
Yes, 68; No, 78; Absent, 4; Vacant, 1;  
Paired, 0; Excused, 0.

68 having voted in the affirmative and 78 in the negative with 4 being absent and 1 vacant, the motion did not prevail.

By unanimous consent, ordered sent forthwith to the Senate.

The following item appearing on Supplement No. 9 was taken up out of order by unanimous consent:

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws" (EMERGENCY) (H.P. 1783) (L.D. 2464) which failed of passage to be engrossed as amended by House Amendment "P" (H-1369) and Senate Amendment "D" (S-801) in the House on October 5, 1992.

Came from the Senate with that Body having



insisted on its former action whereby the Bill was passed to be engrossed as amended by Senate Amendment "D" (S-801) in non-concurrence.

Representative Whitcomb of Waldo moved that the House recede and concur.

Representative Macomber of South Portland requested a roll call.

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 Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, a parliamentary inquiry?

If we vote to recede and concur, in essence what this body will be doing will be voting against the veterans bill that this body adopted earlier? Is that correct?

The SPEAKER: The Chair would answer in the affirmative.

Representative MICHAUD: Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, a point of parliamentary inquiry?

As I understand the rules, if the House votes to Adhere at this point, the bill is dead? If the motion to recede and concur was defeated, then a motion to Adhere was made, would that in fact kill the bill between the two bodies?

The SPEAKER: The Chair would answer in the affirmative. There are other motions available.

Representative GWADOSKY: The Representative from Fairfield understands that.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the Representative from Waldo, Representative Whitcomb, that the House recede and concur. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 483

YEA - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Coles, Constantine, Cote, Crowley, Daggett, Donnelly, Dore, Duffy, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hepburn, Joseph, Kerr, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Salisbury, Savage, Simonds, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Tamaro, Tardy, Tupper, Vigue, Waterman, Whitcomb.

NAY - Adams, Cahill, M.; Chonko, Clark, H.; DiPietro, Erwin, Farnsworth, Goodridge, Graham, Gurney, Hale, Handy, Heeschen, Hichborn, Hichens, Hoglund, Holt, Hussey, Jalbert, Ketterer, Kilkelly, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, J.; O'Dea, Oliver, Paradis, J.; Pineau, Powers, Rand, Rydell, Saint Onge, Simpson, Stevens, P.; Swazey, Townsend, Tracy, Treat, Wentworth, The Speaker.

ABSENT - Clark, M.; Jacques, Paul, Sheltra.

Yes, 99; No, 47; Absent, 4; Vacant, 1; Paired, 0; Excused, 0.

99 having voted in the affirmative and 47 in the negative with 4 being absent and 1 vacant, the motion did prevail.

By unanimous consent, ordered sent forthwith to Engrossing.

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 10 was taken up out of order by unanimous consent:

**PASSED TO BE ENACTED**

**Emergency Measure**

An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws (H.P. 1783) (L.D. 2464) (S. "D" S-801)

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

Representative Handy of Lewiston requested a roll call.

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

Representative RAND: Mr. Speaker, Ladies and Gentlemen of the House: On this issue we can all agree on one thing, Workers' Compensation is not working for the employers and the employees in the State of Maine. Employers are staggering under the cost and some are actually going out of business because of high rates — there is absolutely no correlation to their safety records and good employees get a sneak preview of what hell is like when they become injured and find themselves being jerked around in what is not affectionately known as "the system" and also now regarded as lazy frauds, practically enemies of the state.

Add to this the fact that most legislators do not understand the Workers' Compensation Act. It is extremely involved and complicated. Add to that the fact that the Governor has threatened the political lives of anyone who doesn't vote his way on this bill. Fear among Democrats that he just might be able to make good on his threats and the unprecedented intrusion into the process by the Gannett newspapers who have been pressuring us to pass the Blue Ribbon Commission Report before they had even read it.

We have a situation here, ladies and gentlemen of the House, that honestly defies belief. I remember in 1987 being shocked and amazed that business people, the Maine Chamber, NFIB, small business people called me constantly pressuring me to vote for the 1987 Workers' Compensation reform. I could not believe that business really wanted this reform which included the Fresh Start provision. This was going to be costly. I was a new legislator but I was a business person and I knew that that provision was going to cost us a bundle. It has. Now we are proposing to do away with it.

The fact is that the bill we passed in 1987 that contained the Fresh Start provision — that provision will be with us forever. Any deficit that the insurance companies incurred in the years 1988, 1989, 1990, 1991 and 1992 will be with all businesses in the State of Maine forever.

On the outside chance that enough of us can put all of the political rhetoric and the threats and the partisan viewpoints aside, on the outside chance that enough of us can put that all aside for a moment, I would like to give you my assessment of what this Workers' Comp Blue Ribbon Commission Report actually does.

I have spoken with many Republican legislators in this body, I have spoken with lobbyists of every ill, from labor to insurance companies to the business community of this state and almost to a person, they all agreed (out in the hall) that this is the most technically flawed piece of legislation that has ever been put before this body for consideration. It is such a patchwork of pieces of legislation from so many other states that it will take years and years of costly litigation before it is straightened out. These very same people also agree that the cost savings are achieved by benefit cuts, specifically the 5 year limit on permanent partial injuries, and the 15 percent whole body impairment only provision. It is also agreed that business, particularly small business, is not going to get any cost relief. Compensation costs will continue to rise and we are told we should be grateful for that because if we do nothing right now, they will rise even higher. And, that these benefits will now be based on what percentage of their body is injured, not whether they can return to productive employment.

A preexisting condition provision has resurfaced and if you will think back to the 1991 compensation debacle, this was one of the major points of dispute. We managed to keep it out then and the arguments against it now are the same as before, litigation will increase tenfold. Any person probably over the age of 40 will have little chance of receiving 100 percent of the benefits that he or she is entitled to simply because of the natural aging process. The percentage of injury will have to be determined, the percentage that is due strictly to the workplace injury, will have to be decided in court and there will be a host of costly medical input that will be needed.

Legal representation under this proposal is severely limited and, in some situations, denied. Only for employees, of course. The insurers have no restrictions and the cost of their lawyers will be reflected in the policy premiums that Maine businesses will pay.

The establishment of a Maine Employer's Mutual Insurance Company is one change that is welcomed pretty much by all sides. If this company, and I say

if, is properly organized and managed well, it offers the best hope small business has to get control over the high cost of Workers' Compensation. The problem is that almost everyone, even many Republican legislators that I have spoken with, agree that this company is designed to fail and will be a disaster. Just as this new company will be starting up, January 1, 1993, this bill allows for the deregulation of the private insurance industry. This means that the private insurers will write policies only for the companies that they deem safe and profitable. That's only good business. All of the small premium companies that the insurers will not find profitable to sell policies to, and all of the bad risks will from day one, be concentrated in the mutual company. That's approximately 92 percent of the businesses in Maine that are not self-insured. It is a given and everybody knows that the premiums in the mutual company will be higher from those in the voluntary market. Now the hope is that the companies in the mutual insurance company, the businesses that are insured there, will eventually self-insure. The reality is that most Maine companies are too small. They are so small that they will never have enough assets to self-insure. I think the plan down the road is to pressure the Bureau of Insurance to lower the confidence levels that are now required in Maine for self-insurers. This level ensures that the self-insured will always be able to pay their Workers' Compensation claims. To lower these standards is a serious threat to the integrity of the system but the pressures will be on and because the mutual company premiums will be so high, there is a good chance that those standards will be lower. That's my prediction for the next, should this proposal pass, Workers' Compensation crisis in the State of Maine.

I may be wrong but the fact that the mutual company is denied access to a guarantee fund that every other company who writes insurance in Maine and every self-insured is in, the denial of access to this fund tells me that no one really has a great deal of confidence that the company, as presently set up, will survive. It is my opinion that the only chance the mutual company has is to be the exclusive writer of Workers' Compensation for at least two to five years until the dust settles. This prevents the private insurers from cherry picking, or what we call creaming, and taking all the good risks into the private sector and leaving all of the bad risks in the mutual company.

If we allow the mutual company to be the exclusive writer in the Maine for, like I said, a period of two to five years, after we get this insurance company going properly, after we have collected Maine data, after we have Maine experience, then we should open the market again and allow the private insurers to come in and compete with us but now they would be competing on our turf. We wouldn't be held hostage like we were in 1987 and like we supposedly are now by the private insurance industry. I am confident that a mutual company that is owned by the employers of this state can and will be a great success if it is given this chance to survive. We asked experts from other states who run mutual companies and we asked them, "How do you compete successfully with private industry?" Their answer was, "Excellent servicing, which means safety in the workplace and excellent case management from day one of an injury, which means a quick return to

work for most employees." Safety and return to work, the driving costs behind Workers' Compensation, are not addressed at all under the Blue Ribbon Commission.

Since I don't see any of this realistically happening, I guess that this proposal is probably going to pass so I can only urge you that it is the wrong thing to do, it is the wrong thing to pass this very flawed piece of legislation. The cuts to employees are bad enough but the actual denial of access to legitimately injured workers, access to the benefits that they are entitled to, is even worse.

At least two of the provisions in this proposal have been found unconstitutional in two other states. These states are not known for being particularly generous to their workers as far as Workers' Compensation goes. They are Florida and Texas. We are in for a real long ride, men and women of the House, we are going to be in court for a long time straightening this mess out.

I really wish that there was even an outside chance that there was enough courage in this body to reject this proposal. The crisis is totally manufactured, we could indeed retrieve one of Representative Farnsworth's amendments and we could have a Labor/Management run Workers' Compensation System. We could allow the mutual company to write exclusively for a few years in this state until it gets things settled and if we want to look at benefits and the other provisions, we have plenty of time to do that. We would have a vehicle for businesses to purchase Workers' Compensation and it would be in place by January 1st, it is not an impossibility. I think it is really a tragic situation that we have, I guess, allowed ourselves to get into this position and that probably the overriding emotion that many people are feeling as we cast our votes tonight is confusion and fear. I don't believe that the Maine people, the people that we really do owe our allegiance to, expect that of us and they certainly don't deserve that kind of treatment.

I urge you to reject this proposal.

The SPEAKER: The Chair recognizes the Representative from Howland, Representative Hichborn.

Representative HICHBORN: Mr. Speaker, Ladies and Gentlemen of the House: For the last three days I have listened as patiently as anybody who is badly frustrated can be expected to be patient and I find that this vote we are taking tonight is probably one of the most frustrating votes that I will be casting in any of these past years because my people have the perception that we have a problem down here and that we don't know what to do about it. I have to agree with them. Twice in the past 8 years I have been suckered into voting for what has been termed "a Workers' Compensation reform measure." I was lured into that position by people who told me that this was going to mean greater efficiency, better management, cost savings to the employers and better service to the workers. The only thing that we got out of those two Workers' Compensation reforms that I can see in our district is a greater increase to the employers, some of whom are moving out of state because of this and fewer services for the working people, the injured workers of Maine.

Some people would say, are you pro-union, are you pro-labor? I am both because the employer without a worker can't run his business and the worker without a job is a man out of luck. The perception that people in my area that I have been talking with is

that we have a problem. They have been told and they have heard that 5 percent of that problem is related to fraudulent claims. My people are telling me that they think the other 95 percent of the blame ought to rest on the Chief Executive of the State of Maine, on the insurance commissioner and on the insurance companies. I don't argue with them because I have an idea that they may be right. I think if you are honest, you know that too. I don't intend to be suckered into a third vote on something that is so indefinite as this.

My people have told me that I am down here to represent them and to do what I think is right. I will tell you that every person who has called me this weekend said, "Kill the thing." I said that I am not going to tell you that I am going to kill this because maybe I won't, I will keep my vote open and my options open until the last day. I am not convinced when I know that we are going to go back home and you can maybe tell them that you passed this bill but you know what the rate increase that is being proposed — you are going to save 12 percent and add on 30 percent. Even the poor people up in my area can subtract 12 from 30, they know what that increase is going to be. You know and I know that the cost is going to be an increase for the employers, we are not helping them at all. The people who are being hurt the most are the little fellows, it is not the big ones who are going to be hurt the most. Not only are we doing a disservice to the employers of this state, to the big business, to the little business, we are doing a disservice to the workers too.

I know you are probably going to pass this tonight but I just wanted you to know, and I don't intend to sway your vote, I don't care how you vote, but when I go back home I am going to tell them I voted my own conscience. I find it a statement of arrogance to have the Chief Executive of this state telling us that he won't accept any recommendations for improving this measure from the people who are sent here as Representatives of the people who have an idea for improving a bill. I call that, not only arrogance, but I call it insulting to anyone of intelligence. I feel insulted by such a statement from the Chief Executive so you know how I am going to vote. I don't intend to have anyone telling me how to vote. I will listen to everybody, I have listened to all of you, I have listened to the Governor, but when I vote, I will vote my conscience and I will take my lumps if that is what it takes. I hope when you vote that you will vote for what you know is right. I am not going home and tell my people that they are going to get something better when I know in my heart that they are not going to.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative McKeen.

Representative MCKEEN: Mr. Speaker, Ladies and Gentlemen of the House: I realize most everyone here thinks of me as a labor vote. Well, the thing that bothers me most about this bill is not what happens to the injured workers. The thing that bothers me the most about this bill is what will happen to our small businesses in this state.

By voting down the Amendment that excludes the Maine Mutual or the Employer's Mutual fund from the Guarantee Fund, we have left them wide open. The insurance industry will come in here, they will sell insurance, we will have more business who will be in the voluntary market, I am sure of it. They will

pick up the high premium, low-risk businesses, they will set their sights a little lower, granted. The premium may not be quite as high but they will still be high premium, low-risk businesses that they will take.

Small business, businesses that almost all of us have a number of them in our districts, will be thrown in with the most dangerous workplaces in the State of Maine. I understand about the high-risk pool — yes, these very dangerous businesses will be in the high-risk pool, but your small businesses will be expected to pick up part of their premium. The premiums will be based on each individual group and the high-risk group but when the shortfall comes, everyone will be responsible. If, as has been mentioned, the mutual fund goes belly-up, they will be totally responsible. No insurance company in this state, no self-insurer in this state is put into this position. We are willing to put our small businesses at total risk? I am not, I never can vote for this bill that will put my friends and neighbors out of business. It will actually put them in the poor house.

Mr. Speaker, I would like to pose a question through the Chair.

I have been told, I don't know whether it is true or not, that the Governor said he would veto this if it had a severability clause in it?

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

Representative RICHARDSON: Mr. Speaker, Men and Women of the House: I apologize for getting to my feet because I don't think anybody wants to hear anything more about this, but I have to say that I voted yes on the previous vote. I am extremely close to voting no and I almost changed my mind with the arguments of the Representative from Howland, Representative Hichborn. He told us what was right. This is a terrible bill and a misleading bill and ultimately a destructive bill because of the loss of the opportunity that was presented to us. It is a charade.

I want to say this and I want to say it clearly for the Record, there are two realities for the people of Maine that stand out in this bill. One is that there is going to be another legislature coming up, the 116th, and it is going to face a reality of political dysfunction if we don't begin to set the stage of getting this issue out of the second and third floors of this building. I want it understood from where I stand that nothing is acceptable on the issue of Workers' Compensation unless it finds approval with the affected groups that will be represented in a Workers' Compensation Commission that this bill creates. That group, which is labor and business and not the self interested groups that occasionally represent them but the people who are directly involved in those two vital areas of our economy and the injured workers who are obviously affected by Workers' Compensation. It's those people I want to hear from because the political dysfunction that has dominated this discussion, has dominated this debate, must end. So, I am going to stick with my resolve to vote for this, even though I am voting for a bill that I know is a charade. Somehow, we have to pull it to a body that can do what the second and third floors of this building have been unable to do. If we don't do that, if we don't set up that process and endorse it in this bill with all its

outrageous provisions, as all of those reforms must be forthcoming, we will be visiting upon yes, injured workers, but also all of those people who depend and rely on competent state government and the fiscal services that provide another six months of catastrophe and disaster. That is why I am going to vote for this bill and it is the most distasteful vote I have given since I have been in this body.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I am going to vote for this bill tonight and I will tell you why. Down in my district we have had an industry there since 1935. They suffered through the depression and there were people in that town who stuck with that gentleman all through the depression and when he died his will said they could never be let go out of that business because they had gone through the tough times with him. The business has been good to our little town. We have been good to the business. It is not a great big business, it only employs 650 people, half of those people come from the State of New Hampshire, half of them come from the surrounding towns and only 100 actually come from the town of Berwick. They pay good wages, good people have brought up good families on the wages of Prime Tanning in Berwick. They have had a good record, a fairly good safety record. They have modernized their plant. Back in the early 1980's when the community could let industry use their interest rate when interest was so high, we allowed them to use our interest rate. I happened to be chairman of the board and I signed those bonds. They paid them off, there was never any problem. We have all tried to work together down there, they helped us with our sewage problem, we are still working on that also. Right now they are trying to make a decision whether they can afford to stay in the State of Maine. If they move across the river and they can throw a rock from where they are situated in this state, they can save \$700,000 in just Workers' Compensation alone, nothing else to say of the other advantages. It would take them 30 days over there to get permits through to build a new building which they want to build on our side of the river. I want that building on our side of the river, it is the only industry in that town of 6,000 people.

Also, the Navy Yard brings in \$9.5 million in payroll in that little town and that is quite shaky too. I think we have got to look at our options. The people who work there have called me, municipal officers have talked to me and they want us to vote for this Workers' Comp, they believe it is a new beginning and then when we have to change it (we may have to) but the time will come but at least it is a new beginning so let's try it.

Two or three weeks ago, Representative Farnham and I talked to the owners of Dutchess Shoe in South Berwick and we went down and walked through that shoe shop. These people make a first-class shoe. They have modernized that shoe shop, they have push button technology — I haven't been in a shoe shop as modern as that one is and I used to do cementing in a shoe shop when I was in high school so I know what shoe shops are. We all worked in shoe shops down there. These people were desperate, they took us out through that factory and we talked to the workers and some of the workers who lived in my town called me afterward and said, "Eleanor, do anything you can to help us

because we need those jobs." A couple of the women were fancy stitchers — I don't know how many of you know what fancy stitchers are in a shoe shop but that is a trade and nobody can just sit down to a sewing machine and do what those women do. They are making around \$400 a week and that is good pay down there for those women and they need those jobs. They said, "Do anything to save our jobs." Some of those women came up to the Civic Center in order to speak. They could not get the opportunity to speak up there, they were never allowed the opportunity to speak because they wanted to. They asked us to speak here for them by voting for this and that is what I am going to do.

I would like to say one thing first. It is not the Chief Executive of this state that they blame for this, it is the legislature that they blame for the mess that Workers' Comp is in, not one ever mentioned the Chief Executive. They said you are the ones who made the mess, you are the ones who will clean it up.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative O'Gara.

Representative O'GARA: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I want to calmly but strongly object and flatly deny the suggestion by the Representative from Portland that anyone who votes for this bill is voting for it because they are confused or afraid. I would suggest the Representative may or may not have followed this Representative's career in politics but I doubt if she or anybody else could list very many events that I have voted on because I was confused or afraid.

Just as I object to a certain law office, I had the gentleman's name written down but I knew the Speaker would tell me I shouldn't have said that, just as I object to a certain law office using scare tactics on their injured workers to call legislators, I also object to legislators using similar tactics.

That was just jotted down because it was said earlier but I want to respond to something that was asked about earlier.

Earlier it was asked if we, by voting for this bill, would be voting against veterans if Amendment "P" wasn't on it. I didn't answer that earlier but I will say now, the answer is no. I want to go further than that. We aren't voting against veterans, we aren't voting against injured workers or any other employee, nor are we voting against employers, although I am sure there are those who would say that we are. On the other hand, in my judgment, we are voting finally on a bill that will begin the process of developing a Workers' Comp program to replace the failed laws that we have now. We are voting on a bill that if given a chance to work — I hope we will give it the time to work before we try to amend it if it passes tonight and I hope it will be, that if given a chance, it will correct the glaring problems in our present situation.

I have sat through the committee hearings that were held, the hearing at the Civic Center, day after day of hours (the Majority Leader said somewhere around seven to nine hours) of caucusing with the Democrats in this chamber. Everyone has had their say and everyone has tried their best, in my judgment. Can anyone really believe there is anything to be gained by prolonging this any further? I say we must pass this bill. I won't have any problem going home and defending my vote if in fact I am put in a position of having to defend it. I urge you to vote for enactment.

The SPEAKER: The Chair recognizes the

Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I have a couple of questions but in response to Representative Murphy's statement about people in her district blaming the legislature and not the Governor, well, it shows how different parts of the state are because people in my district blames the Governor for lack of leadership and inability to govern the state as he should. I think for those of you who saw the polls on the television, it showed what the majority of the people think particularly when he came in last in New England and 41st in the country. That is the leadership we have on the second floor.

I have a couple of questions I would like to pose. My first question is, when an employee gets hurt on the job and he notifies the employer, does that employee have to go to the company's doctor?

The SPEAKER: Representative Michaud of East Millinocket has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: Yes, in this bill as proposed within the first ten days the employee has to go to the employers physician of choice. This takes away one of the big provisions that we fought for last year which was choice of physician.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I would like to pose another question through the Chair.

Under the current system, if an employee is hurt, he or she has the right to go to the commission's employee assistant for advice and help on how to get through the Workers' Compensation System — under this bill, who does that injured employee have to go to? Can he go to the commission or where does he go?

The SPEAKER: Representative Michaud of East Millinocket has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: As the bill currently states, there is no one officially set up that the employee would go to. However, the bill does give the Board the right to build in a provision once the board is set up.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I would like to pose another question through the Chair.

After the IME makes the determination, what is the appeal process for appealing that determination?

The SPEAKER: Representative Michaud of East Millinocket has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: Under current law, what you would have is the attorney for the employee being able to argue the fact in front of a commissioner the

IME's decision in carrying significant weight. However, what this bill purports to change is that the IME's decision will have to be overcome by a clear and convincing standard of evidence which is really, really high.

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

Representative HOGGLUND: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

If this bill passes, what does it mean when an independent medical examiner hands down a medical report that is not agreed on?

The SPEAKER: Representative Hoglund of Portland has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Men and Women of the House: Under the bill as proposed, if the IME hands down a decision which is agreed upon, then it is binding. However, if it is not agreed upon, then the injured employee has to argue beyond clear and convincing evidence the weight of the case. Also it is interesting to note that that employee now does not have the right to have an attorney that will get paid if in fact the employee prevails. What happens if benefits are decided, a portion of that goes to the employee's attorney if he can get one to do it pro bono up to that part.

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

Representative HOGGLUND: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

If this bill passes, what if the employee has several medical reports from different doctors contradicting the IME report, what happens?

The SPEAKER: Representative Hoglund of Portland has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Men and Women of the House: This is probably one of the biggest parts of this proposed legislation that I find unsettling. If, for instance, the IME comes down with a decision saying that the injured worker has a disability, the injured worker has five doctors saying, no, it is this much — that IME's decision will outweigh those five doctors.

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

Representative HOGGLUND: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

I have several questions that really bother me. If this bill passes, what if the employee has five doctors that say the injury is totally disabling and work-related and the insurance company has a report from the IME that says it is not totally disabling, what happens?

The SPEAKER: Representative Hoglund of Portland has posed a series of questions through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Men and Women of the House: I believe part of my previous explanation covered that. What that does is that the

five reports would be outweighed by the IME's decision unless the Board decided in a judicial review.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: I guess I would have to disagree, it is not simply a weight of numbers as has been indicated, five against one. It is a weight of the expertise of the findings of the particular medical examiners. Therefore, you could have one against many and win or you could still have — it is just not by numbers, it is by clear and convincing evidence, no matter which side. You could have one against one and it be not clear and convincing.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I don't mean to prolong this, I know the hour is late, but I fear the deed that we might do is going to make it wish it was a lot later.

All through this process, last year, the year before, I have taken the position of keeping an open mind and of working with supposedly the self-interest which I find interesting because I don't find injured workers or insurance companies or doctors or lawyers self-interest, they are interests, they are Maine citizens, so I find working with them to be invigorating and really enlightening.

This bill which was thrown in front of us and said that if we amend it, it will be vetoed, was changed 47 times before the final printing. On further deliberations of this body and the other, this bill saw other revisions to improve it, words like significant cause, clear and convincing, discontinuance without interim. You hear there is no retroactivity in this bill, the benefits aren't, but the procedure is.

If you have an injured worker that has been injured for ten years and is on full disability, after January 1, they can be sent to an IME and this IME can decide that they now have full work capacity. Then it is up to this injured worker to go find an attorney to do the work pro bono. It is up to this injured worker to go back ten years to try to fight his or her case in the courts. I don't find that non-retroactive benefits, it is around the horn but that is what happens.

Years ago when I used to fight crime for a living, if I caught a defendant breaking into your house and he was indigent, the constitution says he gets legal representation for breaking into your house, he still gets that. The taxpayers provide it.

With this bill, the injured worker doesn't get it. Fairness question, yea I think there is a problem there.

The \$441 cap, I have a problem with. I understood when Labor/Management groups said we will go from \$526 to \$441, it made sense. We will build in the inflationary part so that if inflation goes up, those at the cap should be able to get the adjustment, the COLA. Now what we are saying is, if we have a worker, a blue collar or white collar worker in this state who makes the cap, his family isn't entitled to an inflationary increase if he or she is injured. Ladies and gentlemen, I find it disgusting. What we are saying here is we are radically changing a process for a 12 percent save and a 20 percent increase on our businesses. Do you

feel lucky? Maybe we should have done the gambling bill last time.

The victims of this piece of legislation are small business with the way the insurance market is set up on injured workers, Maine employees.

The Blue Ribbon Commission Report is headed the right way, it is 180 degrees from where this body and the second floor have been. It is going the right way, it is calling the right calls. However, when you put a process in place, details count. In this process, I submit to you the devil is in the details.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Hale.

Representative HALE: Mr. Speaker, I would like to pose a question through the Chair.

If an injured worker is sent to the IME, is it required of the IME to make a physical examination of this injured worker or is he just allowed to go over medical records from prior doctors?

The SPEAKER: Representative Hale of Sanford has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Men and Women of the House: I am not aware in any case where the IME who is appointed by the Labor/Management Board or the Workers' Comp System that said they must give a complete physical examination, they may go by the records.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: This has been an extremely difficult decision for me to make. Literally until the last hour, I have been going back and forth on it. I have been voting for many of the amendments because I felt that they improved the package before us, although many of the most important of those are now off the bill. In fact, it has almost been a physical difficulty for me. I am physically upset in making this vote. On the one hand, there are provisions of this package that I think are really, really excellent. The employer-run mutual fund I think is a fabulous thing and I would hate to see that lost because I know that has been fought tooth and nail by the insurance companies for the last couple of years. This is a chance to get this in place and get it running. I think if there are any savings to be recognized in this bill, they are going to come from a reform on the insurance end of the system. So, that is something that I think is absolutely great.

Also, the establishment of a Labor/Management group, we have seen how well that works and having the people who are actually affected by this to be running their own system, again, I think is a fantastic part of this proposal.

On the other hand, there are provisions of this package that basically deprives people of due process rights, that cut their benefits drastically when they have been injured through no fault of their own, which are actually unconstitutional. They have been ruled unconstitutional in other states and, in my own personal judgment, I think they are unconstitutional based on my knowledge of the law and my reading of it.

I have been very concerned by the process that we are following here. How can I sit by and rubber-stamp some of the decisions that we have been seeing today? I will give you one example, not because I think it is the most important thing, but

because in fact it is so silly that we can't even decide this on our own. One of the provisions in the amendment that was run by the Blue Ribbon Commission was for the Labor/Management Board to initiate a study after this bill goes into effect and after all of the provisions go into effect which say that employees can't pay for attorneys and things like that, have to pay for their own attorney or don't have an opportunity for it. One of the amendments said that there would be a study done that would figure out whether or not workers were being deprived of their rights and were unable to get representation. Just because the Blue Ribbon Commission said, "Oh, well, we don't want a study", we are all caving in and saying, we are just going to let them do that and we are going to rubber-stamp whatever they do, when a study isn't costing anybody a cent and when it is being done after the fact? We are just saying, we don't even want them to gather data? I really can't understand how that is a decision that we can't make as legislators simply because the Governor or somebody says that we have to do exactly what the Blue Ribbon Commission says we have to do. I find that very troubling because I was sent here to think for myself and to represent the people that elected me. I find that the process seems to be set up not to let me do that and not to let me do what I think is right.

I agree with everyone in this body and outside of it and the newspapers and people in my district who say that the Workers' Compensation System is broke, that the costs are outrageous and that it is driving businesses out of business and out of this state. They are right, we have to fix it. But after much struggle and debate within myself I have concluded that this bill is so fundamentally flawed and so unfair and actually unlikely to save costs for the small businesses that we are concerned about that I cannot vote for it. I find this whole process particularly upsetting because I do believe there are solutions that are right around the corner. One of them, for example, the Labor/Management group's proposal of the Michigan bill, the Michigan proposal, with the mutual insurance fund is one that has significant support outside this body, significant support within it, support from both labor and management, but that really can't be before us because it isn't what came out of the Blue Ribbon Commission.

I would like to see us do the right thing. I don't think that the bill before us is the right proposal and I am afraid that it is really going to hurt everybody involved very much. I wish that weren't true. I would like to vote for it. In fact about an hour ago, I was planning to but I don't think it is right and I guess I would urge everyone here to do what they really think is right and not to feel that they are being pressured to do something that they don't think is right or just because they want to go home tonight or something like that. I urge you to vote against this bill.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, Ladies and Gentlemen of the House: Here we are again, it is like an old movie, it is the final scene and the mustangs have been put in the box canyon and there is no way out.

What we know about this bill, what we know about Workers' Comp is that it doesn't work. What is

really sad is I think we also know is that this is also not going to work. Small businesses are not going to be helped by this one bit. Injured workers are actually going to be hurt by it. I don't know whose fault it is, maybe it is just that too many people learned how to manipulate the system and therefore there was no way to make it work. It is kind of a shame because we had the Michigan plan on our desk and we could have voted for that and we didn't do it.

I think perhaps there is a way out of this. I think the citizens of the state will figure it out themselves. They will get 53,000 signatures on a referendum and they will scrap Workers' Comp and they should have done it a long time ago.

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

Representative CLARK: Mr. Speaker, Men and Women of the House: I wasn't going to speak this evening but I just went out to make a phone call and assured my family I would not be coming home this evening because of the late debate and I don't want to drive back and forth again like I did last week. On the way in from the hall, I had a good gentleman say to me, "I hope you have your speech written down." I want to tell each and every one of you, I don't take my marching orders from any lobbyist. As you all know I work in a paper mill when I am not here and I take my job very seriously. I had to work today and when I left work they said, "Why are you bothering going down to the legislature? We read the Portland Paper the other day and it looks like leadership has already made up your mind for you, why bother going down when everything has been taken care of?" Well, I am down here not rubber-stamping anything, I am down here to vote for the people I represent, no rubber-stamp from Herb Clark from Millinocket.

I think Representative Hichborn and Representative Richardson of Portland emphasized the fact very well, they did an excellent speech on where everything is. I have been here for 12 years and every time we have Workers' Comp, I am still waiting for the small employer to come up with a reduction of benefits. I have not seen that yet. How are we going to explain when we go back home to a small employer, the injured worker or the future injured worker that they are going to have a savings or a reduction? I talked to lobbyists out there in the hall or in different committee rooms, none of them can come up with an answer. I would like to know how many of you can go home and even explain the package itself? I was either fortunate or unfortunate, before I came here, I took care of the injured worker policy for the mill in Millinocket. I know what it is like to be an injured worker. I was out of work for a year because I fell of a scaffolding 44 feet in the air, so I know both ends and the middle.

It is not going to be easy for me to vote for this bill. If I thought for one minute this was going to save the employer some money, help the injured worker and help the system, I would be voting for it tomorrow, but I have not seen that.

It really bothers me to hear the guy on the second floor tell us, if we vote against this bill, if we add any amendments onto it, he will do what he can to see that we don't come back again next time. Well, I want to send a message to the person on the second floor, I am running again and I bet your bottom dollar I will be here the next time and I will put all the amendments I want back on any bill I feel

like.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Lebowitz.

Representative LEBOWITZ: Mr. Speaker, Ladies and Gentlemen of the House: I don't get up on my feet very often but I want to tell you that when I came down here ten years ago Workers' Comp was a burning issue. It has been a burning issue all the time I have been here. I had hoped that we could find some solution before I stopped my service in this legislature. I don't think that this bill is the ultimate and I know that most of you don't feel that way.

I think back to a year ago in the Spring when we were hog-wrestling Workers' Compensation. It wound up with a deadlock and people in this body asked for a Blue Ribbon Commission to solve our dilemma. We gave them a deadline. The deadline has come. They may have needed more time, we certainly took a lot of time and didn't come up with anything that even resembled a solution. It isn't that anyone else is telling me how to vote, but I have talked with business people in my district and they say, give us something different, what we have now is not working so I assured them that I would vote for what the Blue Ribbon Commission put before us. They don't think it is the ultimate solution for them, for their workers or for the State of Maine but they do feel that if we have a new basis to work from, that we will be able to put another spin on it and get it to the point where it will do more good than what we have now. That is the reason that I am going to vote for the bill, not because anyone else told me but because the business people and the workers in my area told me that. Let's you think that I am all for business, I have a niece and a nephew right now that are on Workers' Comp because they were injured on the job. So, if I am voting against them, so be it. I have to do what I think is correct for the State of Maine and to keep everyone in the state with a job. You cannot have a job without an employer. So, you have to think about the employer as well as the worker when you come to a decision. That is my position.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I find it a little bit strange tonight to rise and speak in a different cause than some of my normal, typical allies that I have enjoyed being in partnership with so often.

I think it is perhaps a case of looking at a half glass of milk and some people looking at it as being half empty. Other people seeing that half glass of milk hopes that it will be half full.

I know in full surety that the system we have in Maine now is so thoroughly broken that it costs thousands of Maine jobs. I know (and I have a solid voting record and I have worked with them and I have visited with them) that the injured workers of the State of Maine get a terrible break under our existing Workers' Compensation System. The worst thing that I could wish upon somebody and what I sincerely hope will never happen to any member of my family, is to be on the Workers' Compensation System as it exists in the State of Maine today. With it, there's delay, there's accusations and controversy. There is almost a guaranteed threat of the breakup of a marriage because of the financial stress. What we have today is ruining the families of the State of Maine. What we have today is making penniless the



workers of the State of Maine who are injured — almost anything is better. This may be but a half a glass of milk but it is a half of glass better than what we have now as far as I am concerned.

First of all, I was opposed to the Blue Ribbon Commission, I think all the members of the Labor Committee will remember that, I did not think that that was the right way to go. I finally went with the majority and decided to go along and listen to somebody outside the legislative arena. I am glad now that I did. I think my initial stance at being opposed to the Blue Ribbon Commission was wrong because they came in with a whole new concept and that is what we need in this state. They came in with a concept that said legislative management of the Workers' Compensation System has not worked and will not work in the future, that the Workers' Compensation System in the State of Maine should be managed by the people that it was created for. It should be managed by the employers and the employees. Though there is much wrong, I feel, about the Blue Ribbon Commission Report, there is that essence of genius in it because that does do that precise thing. It says turn the system over to the workers and the employers and get your nose out of it. Let the people who are affected by it run it. They know the trials and tribulations of it better than you do. They will be less affected by the special interests than you will be and you have proven yourself to be in the past. As a member of that committee that has worked with it for so long, at one point I counted the various special interest groups who always appeared before the Labor Committee in behalf of Workers' Comp issues and I came up with a minimum of 12, I have counted them, I can name them for you, they are there, we have that many special interests pulling and tugging so that it is almost impossible to come out with anything reasonable. History has proven that to be an accurate statement.

So with this turning over the management to labor and management, I think is a step that we should do, can do, and your vote tonight will create that.

There are other things that I am disappointed in but there is one other thing though that it will do — I am disappointed that we cut the benefits, the top benefits, \$536 down to \$441, I think that is wrong. However, I would rather see an injured worker get the \$441 up front now than go through 4, 6, 8, 12 or 14 months that they presently go through because of our present system.

Most of you have not heard the testimony in the depth that we have heard on the Labor Committee, listening to speaker after speaker come in and say, "I went 14 months before I got my first penny." "I went two years before I got a penny. We lost our house, I lost my car, we had no money, my wife divorced me because of financial stress." That is what the injured workers in the State of Maine are going through. I would rather have them have the \$441 now to keep them going than I would to have them have the \$536 a week and wait 14 months for it or four months. A notice of controversy is 120 days and that is almost a guaranteed thing. That 120 days is four months, you are guaranteed four months in most cases before you get one cent under our present law. So, what you have is not a panacea, what you have is not great, what you have has a lot of flaws in it but what you also have is an opportunity to make a leap forward in faith. What you have is an opportunity for a new beginning in the State of Maine, a

beginning that will treat workers and their employers on an equal, level basis and keep the legislature out of the management business and into the policy business where it belongs.

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

Representative LERMAN: Mr. Speaker, Ladies and Gentlemen of the House: I truly feel very inspired by my good friend, Representative Ruhlin, because I think he touched on a lot of things that are truly very important. It is kind of difficult for me to stand today because these are my last days in this body. To have to leave this body on such a sad note is very difficult for me. I was hoping that I could leave here, hoping beyond words that we would not have to deal with such a controversial issue.

After 28 days of being a hostage in this state last year because of Workers' Compensation, shutting the state down, the economy being so difficult as it is, not just in Maine but across the nation, a lot of the problems we are having with Workers' Comp has a lot to do with the national problems. Maybe one such change in November — maybe this problem too shall pass.

I have sat and listened to Workers' Comp for 10 years. In that ten years, maybe if we had put together a Labor/Management Board then, maybe today we wouldn't be faced with the problems that we have in this state. We are not just talking about injured workers, we are talking about people who are small businesses and that makes us the State of Maine. We must remember that. Those people hire one, two, five ten, fifteen people, and those people are the ones who can't afford it. We know that large businesses, large unions, can afford possibly a lot more than those small businesses.

I think I mentioned this earlier this week, it seems like we have been talking about it forever — Representative Farnsworth's amendment that I truly wanted to put in and I still believe that that is still a very important thing because that amendment gets it up and going. It gets it started. I sat at the Augusta Civic Center when several hundred injured workers and business people came to tell us their stories. We did not hear all of them but I am going to tell you folks that I listened to the Governor's person speak to us and give her speech to us and called it nitty-gritty information — that disturbed me very highly. This is not a nitty-gritty issue. These are real issues of real people, people who came to the Civic Center last year, if you recall, by the thousands. You said, we didn't hear enough stories by the injured workers, we didn't hear enough from the businesses — not true. We sat there until twelve-thirty.

Let me tell you a story about the very last man who came to testify. It was twelve-thirty, he sat there the entire day and members of the committee will remember this because it was horrible. This man was an epileptic and he was very tired, probably didn't get his proper rest and he was getting very emotional. He scared us to death because he threatened to kill the man on the second floor. We were frightened because we thought he was serious and his eyes started rolling because we thought he was going to have an epileptic fit. We all sat very quietly and he told us his horrible story, how Workers' Comp had destroyed his life. He tried to commit suicide several times. He lost his family, he lost his house, he lost everything that meant

anything to him but he stayed there until 12:30 p.m. to tell this story because he felt that it was so important. He put himself in jeopardy because we thought he was going to have a fit right there on the floor. This is not a funny story, this is a sad story, and it goes beyond many stories because there are many stories in this state, just like that man's.

I went over to him because I have worked with people who have epileptic fits and it is a very scary thing when you save someone's life who has had one. I calmed this man down and he said he was just fine. I was going to call the police or an ambulance or a family member but he said he had no one to call and that he could get home okay. What a frightening thing.

We heard story after story after story about how this Workers' Comp has ruined people's lives. We sit here and we say we have to vote for this or we can't vote for this because it is the political thing to do. Or, we are told, maybe dictated to, let me put it that way, that we either vote it up or we vote it down. Or, the newspaper tells you how to vote or the political process out there (because it is election time) tells you how to vote — whatever the reasons are.

That is why I said originally I was supportive of Representative Farnsworth's amendment because it gave you something to go home with but what you are going home with right now is very scary. It will be scary to those people again who I just talked about because their benefits will be cut retroactively. Many of them have already heard that they are going to be next in line. Some people right now, by the way, have talked to me and are waiting to have their second surgery or maybe their third surgery and they are frightened because they don't know what to do. Will their health care cover it or will it not cover it? God willing, I hope that we have universal health care some day and maybe they won't have to worry about it.

Will this be a tax increase? You bet your bottom dollar it is going to be a tax increase because everyone of you are going to have those people on the welfare rolls. We are talking about the people who cannot pay and these people will be turning around needing assistance and who is going to pay for that again? Your taxpayers. Is that what you want to go home and say, we did our job, folks, wipe my hands to it, we did a good job, yep, gave you a good package here — I think not. I think those people who are coming to you are getting misinformation.

You know it is interesting, I mentioned at the meeting with the commissioner about — the Chamber of Commerce was sitting in the room — and I said, "Oh, I hear that the Chamber is warm about this, having warm feelings about this." The next day I read in the paper that the Chamber was endorsing it. The next day I read the Chamber was warm again on it and then I hear that they have gone back to all the businesses and misinformed them. I feel that there are a lot of things being said here to a lot of folks to scare them. Some said, where are the injured workers, why are they not walking in the hallways? Why are they not screaming in the yards and rallying around us? Because they were told misinformation too. They were told that they didn't have people to contact them. Ladies and gentlemen, they are counting on you to do the right thing, not what someone else is telling you to do downstairs or the newspapers or misinformation.

I sat here when we had a cap on Workers' Comp, it was 8 percent, we froze it, and then we were threatened by the insurance industry. The insurance industry said if you do not take off that cap, we will leave the state. We buckled under to them again. Then you had reform after reform and we buckled under again and look where we are. We are in the same horrible disaster. I don't want you to buckle again, I don't want you to go home and not win your elections, I want you to go home with your head held high and with something you are proud of and something you did right. My feeling is that I have a wonderful chairman and I have good members of a committee that I have worked closely with and I know how hard they have worked. The B&I Committee has done a super job.

The Blue Ribbon Commission came to us and we didn't have any idea what they were going to do. We got this a couple of weeks ago and we had to sit there and listen and understand what they had tried to do. When we were told that we couldn't make any amendments, what was the point? What were we doing? We are here to do a legislative process, we are here to do our job. So you see, we have come around again. You know we were told to reinvent the wheel but, unfortunately, we have put a few cogs that are not in the wheel and the wheel is now going flat because we haven't done our job.

I don't want to prolong this but I do know how important this is to me because I would like to be able to say farewell to this legislature on a very good note. I truly am sad to say that I have to vote no because there hasn't been a compromise. It is either, you vote it up or you vote it down. That's a sad day in the history of Maine.

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 passage to be enacted. This being an emergency measure, a two-thirds vote of all the members elected to the House is necessary. Those in favor will vote yes; those opposed will vote no.

## ROLL CALL NO. 484

YEA - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutillier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duffy, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hepburn, Hichens, Jalbert, Joseph, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Martin, H.; Melendy, Merrill, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Simonds, Simpson, Small,

Spear, Stevens, A.; Stevenson, Strout, Tardy, Tupper, Vigue, Waterman, Whitcomb.

**NAY** - Adams, Cahill, M.; Chonko, Clark, H.; Erwin, Farnsworth, Goodridge, Gurney, Hale, Handy, Heesch, Hichborn, Hogle, Holt, Hussey, Ketterer, Lerman, Luther, Macomber, Mahany, McHenry, McKeen, Michaud, O'Dea, Oliver, Paradis, J.; Pineau, Powers, Rand, Rotondi, Saint Onge, Skoglund, Stevens, P.; Swazey, Tammaro, Townsend, Tracy, Treat, Wentworth, The Speaker.

**ABSENT** - Clark, M.; Jacques, Paul.

Yes, 107; No, 40; Absent, 3; Vacant, 1; Paired, 0; Excused, 0.

107 having voted in the affirmative and 40 in the negative with 3 being absent and 1 vacant, the bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith to the Senate.

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**ORDERS**

On motion of Representative HICHBORN of Howland, the following Order:

**ORDERED**, that Representative Lorraine N. Chonko of Topsham be excused October 3 for personal reasons.

Was read and passed.

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**PASSED TO BE ENACTED**

An Act to Create Jobs for the State (H.P. 1785) (L.D. 2465) (H. "B" H-1366)

Was 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.

By unanimous consent, ordered sent forthwith to the Senate.

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On motion of Representative Strout of Corinth, Adjourned at 11:05 p.m. to Tuesday, October 6, 1992, at ten o'clock in the morning.

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