

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 17, 1993 to July 14, 1993

ONE HUNDRED AND SIXTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
53rd Legislative Day
Wednesday, May 19, 1993

The House met according to adjournment and was called to order by the Speaker.
Prayer by Honorable Constance D. Cote, Auburn.
The Journal of Tuesday, May 18, 1993, was read and approved.

SENATE PAPERS

Divided Report

Later Today Assigned

Majority Report of the Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (S-105) on Bill "An Act to Extend the Repeal Date of the Laws Governing Biosynthetic Bovine Somatotropin" (EMERGENCY) (S.P. 198) (L.D. 634)

Signed:

Senators: PINGREE of Knox
MARDEN of Kennebec

Representatives: SPEAR of Nobleboro
AHEARNE of Madawaska
HEESCHEN of Wilton
NASH of Camden
CROSS of Dover-Foxcroft
KNEELAND of Easton

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

Signed:

Senator: PARADIS of Aroostook

Representatives: TARDY of Palmyra
HUSSEY of Milo
STROUT of Corinth
ALIBERTI of Lewiston

Came from the Senate with the Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-105) as amended by Senate Amendment "A" (S-123) thereto.

Reports were read.

Representative Tardy of Palmyra moved that the House accept the Minority "Ought Not to Pass" Report.

On further motion of the same Representative, tabled pending his motion that the House accept the Minority "Ought Not to Pass" Report and later today assigned.

Non-Concurrent Matter

Bill "An Act to Protect Consumers when Disconnecting Cable Television Services" (EMERGENCY)

(S.P. 195) (L.D. 631) which was passed to be engrossed as amended by Committee Amendment "A" (S-58) in the House on May 17, 1993.

Came from the Senate with that Body having adhered to its former action whereby the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-58) as amended by Senate Amendment "A" (S-106) thereto in non-concurrence.

The House voted to recede and concur.

COMMUNICATIONS

The following Communication: (S.P. 500)

116TH MAINE LEGISLATURE

May 17, 1993

Senator Judy A. Paradis
Rep. Robert J. Tardy
Chairpersons
Joint Standing Committee on Agriculture
116th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Dr. F. Langdon Davis of Augusta for reappointment to the Animal Welfare Board.

Pursuant to P.L. 1992, Chapter 779, this nomination will require review by the Joint Standing Committee on Agriculture and confirmation by the Senate.

Sincerely,

S/Dennis L. Dutremble
President of the Senate

S/John L. Martin
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Agriculture.

Was Read and Referred to the Committee on Agriculture in concurrence.

The following Communication: (S.P. 501)

116TH MAINE LEGISLATURE

May 17, 1993

Senator Mark W. Lawrence
Rep. Paul F. Jacques
Chairpersons
Joint Standing Committee on Energy and Natural Resources
116th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Ronald J. Mallett of Old Town for appointment and Owen R. Stevens of South Berwick for reappointment to the Board of Environmental Protection.

Pursuant to Title 38, MRSA Section 341-C, these nominations will require review by the Joint Standing Committee on Energy and Natural Resources and confirmation by the Senate.

Sincerely,

S/Dennis L. Dutremble
President of the Senate

S/John L. Martin
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Energy and Natural Resources.

Was Read and Referred to the Committee on Energy and Natural Resources in concurrence.

REPORTS OF COMMITTEES

Ought to Pass as Amended

Representative LARRIVEE from the Joint Select Committee on Corrections on Bill "An Act to Ensure Appropriate Community-based Treatment of Nonviolent Juvenile Offenders" (H.P. 146) (L.D. 191) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-346)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-346) was read by the Clerk and adopted and the bill assigned for second reading Thursday, May 20, 1993.

Ought to Pass as Amended

Representative COLES from the Committee on Marine Resources on Bill "An Act Revising the Shellfish-harvesting Laws" (H.P. 773) (L.D. 1046) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-353)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-353) was read by the Clerk and adopted and the bill assigned for second reading Thursday, May 20, 1993.

Ought to Pass as Amended

Representative PLOURDE from the Committee on Transportation on Bill "An Act to Change the Railroad Fire Protection Laws" (H.P. 980) (L.D. 1311) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-354)

Report was read and accepted, the bill read once. Committee Amendment "A" (H-354) was read by the Clerk and adopted and the bill assigned for second reading Thursday, May 20, 1993.

Divided Report

Tabled and Assigned

Majority Report of the Committee on Appropriations and Financial Affairs reporting "Ought Not to Pass" on RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide the Governor with a Line-item Veto (H.P. 948) (L.D. 1277)

Signed:

Senator: TITCOMB of Cumberland

Representatives: CARROLL of Gray
HICHBORN of Howland
MICHAUD of East Millinocket
POULIOT of Lewiston
CHONKO of Topsham
RYDELL of Brunswick

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-338) on same RESOLUTION.

Signed:

Senators: FOSTER of Hancock
PEARSON of Penobscot

Representatives: KERR of Old Orchard Beach
FOSS of Yarmouth
REED of Falmouth
MacBRIDE of Presque Isle

Reports were read.

Representative Chonko of Topsham moved that the House accept the Majority "Ought Not to Pass" Report.

On further motion of the same Representative, tabled pending her motion that the House accept the Majority "Ought Not to Pass" Report and specially assigned for Thursday, May 20, 1993.

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(S.P. 435) (L.D. 1367) Resolve, to Grant an Easement from the Maine Technical College System to Darling's, Incorporated to Construct and Use an Access Road on the Campus of Eastern Maine Technical College (Governor's Bill) Committee on State and Local Government reporting "Ought to Pass"

(S.P. 468) (L.D. 1460) Bill "An Act Relating to Publication of Legal Notices" (EMERGENCY) Committee

on Legal Affairs reporting "Ought to Pass"

(S.P. 151) (L.D. 483) Bill "An Act to Ensure Uniformity in Gasoline Octane Levels" Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (S-145)

(S.P. 449) (L.D. 1416) Bill "An Act to Amend the Laws Governing the Hancock County Budget Advisory Committee" Committee on State and Local Government reporting "Ought to Pass" as amended by Committee Amendment "A" (S-146)

(H.P. 1072) (L.D. 1438) Bill "An Act to Reapportion Maine School Administrative District Number 30" (EMERGENCY) Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-340)

(H.P. 192) (L.D. 255) Bill "An Act Concerning Ice-fishing Shacks" (EMERGENCY) Committee on Marine Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-341)

(H.P. 1010) (L.D. 1356) Bill "An Act to Amend the Charter of the Plymouth Water District" Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-342)

(H.P. 864) (L.D. 1173) Bill "An Act Related to the Adoption of Municipal Ordinances and Comprehensive Plans and to Revise Notice Requirements for Certain Zoning Changes" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-343)

(H.P. 1006) (L.D. 1352) Bill "An Act to Abolish the Castine Water District" Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-344)

(H.P. 783) (L.D. 1056) Bill "An Act to Expand the Use of Telecommunications by Hearing-impaired and Speech-impaired Customers" Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-345)

(H.P. 798) (L.D. 1084) Bill "An Act Repealing Advisory Boards on Aging, Retirement and Veterans' Matters" Committee on Aging, Retirement and Veterans reporting "Ought to Pass" as amended by Committee Amendment "A" (H-351)

(H.P. 513) (L.D. 671) Resolve, to Establish a Commission to Study the Statutory Procedures for Local Property Tax Abatement Appeals Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-355)

(H.P. 772) (L.D. 1045) Bill "An Act to Amend the State Reporting Requirements for State Party Committees" Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-359)

(H.P. 443) (L.D. 569) Bill "An Act to Clarify the Days During Which Prisoners May Be Delivered to the Custody of the Department of Corrections" Joint Select Committee on Corrections reporting "Ought to Pass"

(H.P. 874) (L.D. 1188) Resolve, to Establish the Academy for Public Service Study Committee Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-362)

(H.P. 843) (L.D. 1148) Bill "An Act to Amend the Power of Sale Foreclosure Laws" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-363)

There being no objections, the above items were ordered to appear on the Consent Calendar of Thursday, May 20, 1993, under the listing of Second Day.

CONSENT CALENDAR

Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(S.P. 290) (L.D. 860) Bill "An Act to Amend the Workers' Compensation Laws for Workers in Certain Marine Resources Industries" (C. "A" S-134)

(S.P. 305) (L.D. 938) Bill "An Act Regarding Visually Impaired Voters" (C. "A" S-139)

(S.P. 313) (L.D. 946) Bill "An Act to Authorize Trustees to Make Trust Investments in Certain Affiliated Securities and Bonds" (C. "A" S-135)

(S.P. 341) (L.D. 1038) Bill "An Act Clarifying Certain Traffic Infraction Provisions of the Motor Vehicle Laws" (C. "A" S-131)

(S.P. 355) (L.D. 1069) Bill "An Act to Amend the Maine Civil Rights Law Regarding Violations of Constitutional Rights" (C. "A" S-136)

(S.P. 380) (L.D. 1136) Bill "An Act to Clarify and Amend the Law Regarding Open-end Mortgages" (C. "A" S-130)

(H.P. 468) (L.D. 605) Bill "An Act Concerning Termination of Tenancies at Will" (C. "A" H-316)

(H.P. 861) (L.D. 1170) Bill "An Act Regarding the Department of Environmental Protection Rulemaking" (C. "A" H-317)

(H.P. 159) (L.D. 211) Bill "An Act Related to Lottery Machines" (C. "A" H-319)

(H.P. 940) (L.D. 1269) Bill "An Act Authorizing the Commissioner of Inland Fisheries and Wildlife to Establish Open and Closed Seasons on the Hunting of Deer" (C. "A" H-320)

(H.P. 755) (L.D. 1022) Bill "An Act to Amend the Maine State Retirement System Laws Related to the Participating Local Districts Consolidated Plan" (EMERGENCY) (C. "A" H-327)

(H.P. 993) (L.D. 1335) Bill "An Act to Bring the

State Tipping Wage up to the Federal Tipping Wage" (C. "A" H-332)

(H.P. 179) (L.D. 231) Bill "An Act to Establish Uniform Procedures and Standards for Administrative Consent Agreements" (C. "A" H-334)

(H.P. 168) (L.D. 220) Bill "An Act to Amend the Shoreland Zoning Law" (C. "A" H-335)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were Passed to be Engrossed as Amended in concurrence and the House Papers were Passed to be Engrossed as Amended and sent up for concurrence.

PASSED TO BE ENGROSSED

As Amended

Bill "An Act to Amend Maine's Unclaimed Property Act" (S.P. 185) (L.D. 621) (C. "A" S-132)

Bill "An Act to Prohibit Commercial Hunting on Unlicensed Land" (S.P. 210) (L.D. 681) (C. "A" S-133)

Bill "An Act to Clarify Ambiguous Language and Correct Errors in Licensing Procedures and Requirements for Licensees Regulated by the Superintendent of Insurance" (S.P. 361) (L.D. 1075) (C. "A" S-129)

Bill "An Act Regarding the Credentialing of School Psychological Service Providers" (S.P. 262) (L.D. 800) (C. "A" S-125)

Bill "An Act to Create a Student Seat on the Board of Trustees of the Maine Maritime Academy" (S.P. 359) (L.D. 1073) (S. "A" S-150 to C. "A" S-113)

Bill "An Act Regarding Suspension of Maine Guide Licenses" (H.P. 1001) (L.D. 1347) (C. "A" H-321)

Bill "An Act to Improve Access of Injured Workers to Medical Care" (H.P. 644) (L.D. 875) (C. "A" H-331)

Bill "An Act to Amend the Laws Concerning Massage Therapists" (H.P. 982) (L.D. 1313) (C. "A" H-333)

Bill "An Act to Establish Municipal Cost Components for Unorganized Territory Services to be Rendered in Fiscal Year 1993-94" (EMERGENCY) (H.P. 859) (L.D. 1168) (C. "A" H-310)

Were reported by the Committee on Bills in the Second Reading, read the second time, the Senate Papers were Passed to be Engrossed as Amended in concurrence and the House Papers were Passed to be Engrossed as Amended and sent up for concurrence.

SECOND READER

Tabled and Assigned

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Create a Unicameral

Legislature (H.P. 768) (L.D. 1035) (C. "A" H-277)

Was reported by the Committee on Bills in the Second Reading and read a second time.

On motion of Representative O'Gara of Westbrook, tabled pending passage to be engrossed and specially assigned for Thursday, May 20, 1993.

ORDERS OF THE DAY

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 24.

The Chair laid before the House the first item of Unfinished Business:

An Act to Exempt Certain Greenhouse and Nursery Owners from Licensing Fees" (H.P. 166) (L.D. 218) (H. "A" H-238 to C. "A" H-209)
TABLED - May 18, 1993 (Till Later Today) by Representative GWADOSKY of Fairfield.
PENDING - Passage to be Enacted.

On motion of Representative Tardy of Palmyra, under suspension of the rules, the House reconsidered its action whereby L.D. 218 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (H-209) as amended by House Amendment "A" (H-238) thereto was adopted.

The same Representative offered House Amendment "B" (H-361) to Committee Amendment "A" (H-209) and moved its adoption.

House Amendment "B" (H-361) to Committee Amendment "A" (H-209) was read by the Clerk and adopted.

Committee Amendment "A" (H-209) as amended by House Amendments "A" (H-238) & "B" (H-361) thereto were adopted.

The bill was passed to be engrossed as amended by Committee Amendment "A" (H-209) as amended by House Amendments "A" (H-238) & "B" (H-361) thereto in non-concurrence and sent up for concurrence.

The Chair laid before the House the second item of Unfinished Business:

An Act to Ensure Integrity in Maine Government by Prohibiting Involvement of Constitutional Officers and the State Auditor in Political Action Committees (H.P. 613) (L.D. 828) (C. "A" H-242)
TABLED - May 18, 1993 (Till Later Today) by Representative GWADOSKY of Fairfield.
PENDING - Passage to be Enacted.

On motion of Representative Paradis of Augusta, retabled pending passage to be enacted and later today assigned.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the first tabled and today assigned matter:

SENATE DIVIDED REPORT - Majority (11) "Ought to Pass" as amended by Committee Amendment "A" (S-141) - Minority (2) "Ought Not to Pass" - Committee on State and Local Government on Bill "An Act to Impose Term Limits on Presiding Officers of the Legislature" (S.P. 167) (L.D. 559)
 - In Senate, Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-141)
 TABLED - May 18, 1993 by Representative JOSEPH of Waterville.
 PENDING - Motion of same Representative to accept the Minority "Ought Not to Pass" Report.

On motion of Representative Paradis of Augusta, retabled pending the motion of the Representative from Waterville, Representative Joseph, that the House accept the Minority "Ought Not to Pass" Report and specially assigned for Thursday, May 20, 1993.

The Chair laid before the House the second tabled and today assigned matter:

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Protect State Parks (H.P. 176) (L.D. 228) (C. "A" H-92)
 TABLED - May 18, 1993 by Representative PARADIS of Augusta.
 PENDING - Final Passage.

On motion of Representative Mitchell of Freeport, under suspension of the rules, the House reconsidered its action whereby L.D. 228 was passed to be engrossed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby Committee Amendment "A" (H-92) was adopted.

The same Representative offered House Amendment "A" (H-360) to Committee Amendment "A" (H-92) and moved its adoption.

House Amendment "A" (H-360) to Committee Amendment "A" (H-92) was read by the Clerk and adopted.

Committee Amendment "A" (H-92) as amended by House Amendment "A" (H-360) thereto was adopted.

The bill was passed to be engrossed as amended by Committee Amendment "A" (H-92) as amended by House Amendment "A" (H-360) thereto in non-concurrence and sent up for concurrence.

The Chair laid before the House the third tabled and today assigned matter:

JOINT ORDER - Relative to Joint Rule 13-B - Joint Select Committee on Rules (H.P. 1114)
 TABLED - May 18, 1993 by Representative GWADOSKY of

Fairfield.
 PENDING - Passage. (2/3 Vote Required)

On motion of Representative Paradis of Augusta, tabled pending passage (2/3 vote required) and specially assigned for Thursday, May 20, 1993.

The Chair laid before the House the fourth tabled and today assigned matter:

SENATE DIVIDED REPORT - Majority (8) "Ought to Pass" as amended by Committee Amendment "A" (S-92) - Minority (5) "Ought Not to Pass" - Committee on Labor on Bill "An Act to Amend the Occupational Disease Law" (S.P. 216) (L.D. 687)
 - In Senate, Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-92)
 TABLED - May 18, 1993 by Representative GWADOSKY of Fairfield.
 PENDING - Motion of Representative CLEMENT of Clinton to accept the Majority "Ought to Pass" as amended Report.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: This particular piece of legislation, L.D. 687, recognizes that a court decision was made after the 1992 Blue Ribbon Workers' Compensation Reform. It tried to address the problem that was created by the decision of another coequal branch of government.

Let me back up — the law in the State of Maine, as it is in all the other states on Workers' Comp, says that there is an agreement made by the employees and the employers. What happens is that the employee gives up his or her right to sue the employer should an accident or an illness that is work-related happens in the workplace. In return, the employer says we will give you certain benefits, two-thirds it has been historically in the past, of your pay and so forth. What happened in this court decision that came about after the reform in 1992 was made, we said, no, that's not the way it is going to be and such.

If it is an occupational disease, a disease that came about because of conditions in the workplace, you must in fact be disabled, the key word is disabled, by this illness to collect Workers' Comp benefits. It, in essence, told the workers of the State of Maine if any of you are suffering from asbestosis, if you are suffering from the inhalation of toxic substances that happens occasionally, that the best thing for you to do is stay home and claim to be disabled, thereby, increasing the cost to the Workers' Compensation System, increasing the cost to the employer because that is only way that you are going to collect your benefits. As probably 80 or 90 percent of Maine workers are, you have that drive to go to work, a drive that is nationally recognized, Maine workers are nationally recognized as hard workers, if you have that drive to go to work and you do show up, even though you feel terrible, forget it, we are not going to give you any benefits whatsoever, including your medical benefits. You must be disabled. That type of decision will encourage the good workers of the State of Maine to stay home when

they are not feeling well. That is the problem that many of us who had to deal with the laws, creating the laws, those of us who had to deal with helping to create the 1992 reform had a real problem with that particular court decision. It is not our place to pass judgment on the decision as such but to recognize the impact upon the Workers' Compensation System.

It had an impact that would lower the existing benefits potentially. It also did not pass-through nor was it ever recognized that if there were to be any cost savings that the employers, the businesses of this state who I feel have been over-charged to start with through the Workers' Comp System, it would never recognize that they would in fact receive one single cent from them. The money would go to who knows where in that system. I have an idea where but I won't say right now this morning.

If you look at that and say, well, who can really be opposed to that type of recognition of what we did here last October in making the reforms, this should be a unanimous report. Quite frankly, there are those who feel that it did represent a change, this particular piece of legislation.

The Labor Committee, in a bipartisan spirit, said we will have no substantive changes in the Workers' Comp laws, we will give the reform a chance to work. Some members look at this as being a substantive change. The majority of us look at it recognizing exactly what it is, it is correcting a substantive change that another branch of government made after the reform.

L.D. 687 restores the balance as it was in October of 1992 and it does not represent a change in our Workers' Comp laws. L.D. 687 will not increase Workers' Comp insurance rates. There has never been any consideration given to that court decision in establishing rates, either for the employers or for their employees. The decision that came up to the rates being established as they are now recognized that employees would receive medical benefits, if they in fact were still attending work, that the old laws of Workers' Comp prevailed. When those rates were set, the so-called Manzo decision had not been rendered by the Supreme Court as yet but there was no recognition of that given after that decision or even up to the present time. So, I say that this will not increase the cost of the Workers' Compensation.

With these things in mind, I feel that the majority of the Labor Committee made the proper decision and made the proper recommendation to this body to protect the Reform Act of 1992, to protect that balance that has always been there between the employers and the employees. I hope that you will recognize the need to keep that balance, the need to protect the Reform Act of 1992 and accept the Majority Report this morning.

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Aikman.

Representative AIKMAN: Mr. Speaker, Men and Women of the House: This bill would add costs to an already extremely costly Workers' Compensation System. The exact cost cannot be actuarially determined since those potential claimants are not currently making claims.

Maine cannot afford any increase in its Workers' Compensation costs. There is a sound policy behind the current limits paid for occupational disease. It was never the intent of the occupational disease laws to make employers the general insurers of their

employees. This law, as currently written, prevents employers from becoming general health insurers and as a good public policy, an individual can be diagnosed as having an occupational disease but may not need any medical care. This bill would open up opportunities for a claimant to seek costly treatment and employers would be exposed to costly medical bills for decades.

The Workers' Compensation Act, which contains the Occupational Disease Law, consists of a delicate balance of interests. This change would throw out that delicate balance. Ladies and gentlemen, this is not the time for Maine to be passing laws to make it more difficult to do business in the state. I urge you to vote against the pending motion.

Mr. Speaker, I request a roll call.

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, please.

If an employee or a laborer in the State of Maine does have an occupational disease, is diagnosed as having an occupational disease but does not have it so they are totally disabled from performing gainful employment -- which insurance carrier is going to pay when it is diagnosed as occupational disease? Is a private insurance carrier going to pay?

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

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: Would you please ask the good Representative to repeat her question?

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

Representative HALE: Mr. Speaker, my question is, if anyone from the labor force is diagnosed with an occupational disease but they are not disabled from the occupational disease but require medical attention -- is the burden of the costs of this medical treatment going to be put onto the private medical care carriers?

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I thank the Representative from Sanford for her question.

If either an injury or an illness occurs in the workplace, that balance between the employer and the employee has always existed where the employee (they call it making whole, I am sure the Representative remembers from her sessions on the Labor Committee) and by making whole, that includes medical treatment. That has gone along and then in 1989, the state, as well as most other states, passed a specific portion of the Workers' Comp law called the Occupational Disease Act, which more precisely targeted those diseases that come about in the workplace, such as carpal tunnel syndrome, asbestosis, lung disorders from inhalation of toxic chemicals and so forth. With the passage of that, it more specifically strengthened the Workers' Comp or strengthened that balance between an illness that happens in the workplace and the employer/employee relationship. So yes, it has been in the past that private insurers or the so-called private insurers, those people selling private insurance policies to employers, have been charging that and have been

paying that. This is the first decision that I am aware of, and I want to emphasize I am aware of, that changed that balance.

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

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

If I go to the doctor's or the emergency room, whichever the case is, there's always on the form you fill out, "Is this a work-related illness or injury?" If I say yes it is work-related, who pays?

The SPEAKER: The Representative from Sanford, Representative Hale, has posed another question through the Chair to anyone who may respond if they so desire.

The Chair recognizes that Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: That is one of the problems. I overlooked that and I am glad the Representative brought it up.

What happens when you go and fill out that form that it is work-related, your personal insurance (now I understand what the Representative meant by private insurance) your personal insurance, the insurance you thought you may have had for disability or a homeowners or accident or sickness policy will not pay. The form says, "Is this work-related?" That is exactly what happened in this particular case — the individual went for many years feeling very poorly but went to work. Finally, it got to the point they had to take medication just to keep themselves going. They put in for it on a private insurance, the insurance that he had himself, the insurance that he paid for out of his own pocket, his accident and sickness policy — that policy would not pay because that policy said when you filled out that form, "was it work-related?" and it was work-related, it says we will not pay. Those of you who are sitting in your seats today, go home and look at your policy. Every policy that I am aware of will tell you that your private sickness and accident policy will not pay for illness that is work-related. Therefore, you are dependent upon the benefit of the Workers' Comp system and it has historically been paid until the late October decision in the Manzo case.

I hope that gives the Representative her answer.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, Men and Women of the House: I would like to agree with my good colleague, Representative Ruhlin, on one thing, I think there is a problem here and I think there is a hole and I think sometimes that there is no question that we are talking about out-of-pocket payments for these medical expenses in these cases. It is certainly a travesty, I agree.

However, this bill would allow medical benefits for somebody diagnosed with an occupational disease even though their diagnosis came much later and they may have left the job. It presents boundless, timeless liability for the employer and it is a significant change in the Workers' Comp System as we know it.

In this green form that was sent around to you just recently by Senator Handy, he says that it is not a radical change. I agree, it is not a radical change but it is a significant change. So, let's talk about the definition of radical and significant while we are at it.

I read in the fiscal note to this bill that premiums for Workers' Comp would rise if this were to pass. Now, whether you agree or disagree with my position on Workers' Comp, I think we all agree on one thing, we cannot afford at this time to have the Workers' Comp premiums rise anymore than they already have.

I think we can and should take the time to address this as a health care insurance issue. Believe me, I do have sympathy for those, whether they have been disabled or they haven't been disabled, who have an occupational illness. It must be covered. I am not in dispute with that, I agree fully that it must be covered. So, I implore today that — you want to change the Workers' Comp System, let's do it here and now, let's kill this thing if you want to but let's not tinker with it in this manner and have the Workers' Comp rates rise and continue to rise and rise and rise. If you want to do something, if you want to make a radical change, I will agree with Senator Handy's wording here — okay, let's make a radical change but let's not do this, let's put this problem where it belongs, in the health care insurance industry, that's where it belongs. I think it is a shame that the policies are written the way they are written because it really should not be that way. People should take care to read their policies but that's where this issue belongs.

So, I urge you to not accept the Majority "Ought to Pass" Report. Please vote against this bill.

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

Representative CHASE: Mr. Speaker, Colleagues of the House: I rise to urge you to support the Majority "Ought to Pass" Report on L.D. 687.

Our Workers' Compensation law has a couple of benefits in it, one is called a Medical Only Claim. That means if you go to work and you are injured at work, you cut your hand at work and you go to the hospital and you receive medical care and you are stitched up and you go back to work, you haven't lost any time, that bill is covered under our Workers' Compensation Act. You return to work, you continue to work, then there is no problem. Most cases are not like that, you lose work time and you also benefit from lost work time.

However, under the Occupational Disease Law, that language is not as specific. This is a situation that Representative Ruhlin was describing. A worker contracts an occupational disease such as asbestosis which is entirely due to the work that that worker performs. The employee needs medical care, continues to see a doctor, but also continues to attend work. None of those medical bills are paid.

This oversight in our system — I don't consider this as a change in our Workers' Comp law because our Workers' Comp law in fact includes for injuries a "medical only" category.

If you refer to your green sheet that you just received — what L.D. 687 will not do — under the first category, you will notice that there is a paragraph that says, "Since 1989, the former Workers' Compensation Commission, Appellate Division, had consistently ruled that an employer/insurer had to pay a worker's medical expenses if she or he had been diagnosed as having an occupational disease and had not lost time from work." Briefly stated, the Appellate Division was affirming that the standards set by our Workers' Comp law, that is, a "medical

only" claim is legitimate, does exist and is paid. The Appellate decision upheld that practice. Only recently in October of 1992 in the Manzo decision was that practice deemed inappropriate, those costs are not compensable. We are not in fact proposing a change to the system as we have known it, we are proposing that the change be not to deem uncompensable those injuries that in fact had been compensated since 1989. The green sheet also explains why passage of this law will not increase Workers' Compensation Insurance rates.

As Representative Ruhlin has pointed out and as I am trying to explain again, perhaps not as clearly, these medical claims for occupational diseases have been covered and built into our rates until present time. This is not a change in our Workers' Compensation law.

I urge you to accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Clinton, Representative Clement.

Representative CLEMENT: Mr. Speaker, Men and Women of the House: I rise on an emotional issue here today because I have an occupational disease and it is called asbestosis. I don't feel that it is fair when a person works for a company or in a trade at different mills for many years and the disease does not show up for many years and then you come down with an occupational disease and it is not covered by Workers' Compensation. Though the insurance that we have today in this House looks at it as a pre-existing condition and is not covered, when I need medication or I need x-rays to check on what the progress of the disease is doing, I pay out of my back pocket. I don't think this fair.

This bill that is on the floor today will help take care of that problem. I urge you to vote for the Majority "Ought to Pass" Report. It came out of committee as a Majority Report, we discussed this at length in committee and I feel that it is a fair piece of legislation for people who have an occupational disease.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, Men and Women of the House: I just want to point out that I hope you don't think I'm an uncaring individual because I just want to point out that everything that the good Representative from Clinton has said is true. I agree with him that the system is not fair.

I have a bill that is coming through in just a few days that regards pre-existing conditions and I hope that it will help in this problem. You'll see it, it will be within a week or two and I am telling you that it is a health insurance issue. If we send it to the Workers' Comp pool, which is a much smaller pool of payors, it will increase the risk substantially. It will not be able to spread the risk across the pool, it will increase the risk substantially so that Workers' Comp premiums again will be forced to rise. I know some of you small business supporters realize that we just can't afford to do that. We do have to take care of the problem that the good Representative from Clinton has talked about. I sympathize with that situation so much that I have submitted a bill this session on pre-existing conditions. I don't there should be riders on pre-existing conditions, I disagree with that totally. I hope that that will take care of the problem. I hope that you will agree with me on that

particular issue and I hope you realize that this has got to be a health care issue because otherwise you are talking about a boundless, timeless situation where the employer is liable for years and years and years after the employee retires on what has happened. We just can't do that to the Workers' Comp system, it is a significant change. Anyone who says it is not, I would ask them to go back and reconsider.

The SPEAKER: The Chair recognizes the Representative from Oakland, Representative Poulin.

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

Does the new board have the authority to make this change? Did they have a position on this change, if I may ask?

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

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: Very plainly and briefly, no, the legislature said it didn't want to take it but it never did give up its lawmaking responsibilities so the board does not have the regulatory authority to make the changes. I am sorry but I forgot the second part of the question.

The SPEAKER: The Chair recognizes the Representative from Oakland, Representative Poulin.

Representative POULIN: Mr. Speaker, I was curious to their position on this matter if they made one?

Representative RUHLIN: Mr. Speaker, in response to the gentleman's question, the board has not taken a position on this particular piece of legislation.

The SPEAKER: The Chair recognizes the Representative from Sedgwick, Representative Gray.

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

If in fact someone contracts a disease through work-related experience, is that person then, if it is not covered currently by Workers' Compensation Insurance, able to sue for benefits?

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

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I thank the Representative for her question. It is an interesting question. I have asked several lawyers about it and, frankly, I received several different answers. There is very definitely a possibility that a person could bring successful suit and that you void that longstanding contract between the employer and the employee. How good your chances are of prevailing at a court — remember, there's always two attorneys who go to court, one wins and one loses. I have found nobody who said that it is overwhelming on one side or the other. They all say that it would be an interesting case and I believe without question that there will be one. Failing legislative remedy, there will be, I am sure, a trial case on that right of suit.

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

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

To Representative Ruhlin or anyone else who may care to answer — if this bill passes, do the

benefits that are contained within this bill become retroactive to people such as the good Representative from Clinton, Representative Clement? If so, how many people might this involve?

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

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: That also is a very good question. Basically, this legislation does not have a retroactive clause as such, so it would depend upon prior decisions of the commissioners or the courts. There is no definite yes or no answer to the gentleman's question, although it is an interesting question. In all probability, I would say no, there has been no history of going back and retroactively restoring rights as such.

Along that same line, I do have an amendment that is downstairs in the Revisor's Office that I intend to introduce to this bill if successful at its second reading which would restore the rights that pre-existed to the October 24th judicial decision, from that period of the judicial decision of October 24th until this law comes into effect. However, we have always in the past I guess been repugnant of retroactivity in the system and that is as close as I can come to a yes or no answer.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Rydell.

Representative RYDELL: Mr. Speaker, Ladies and Gentlemen of the House: I want to clarify a few things with respect to health insurance coverage for pre-existing conditions. This legislature passed L.D. 701, the community rating bill, last year which as of July 1, 1993 will mean that persons who have insurance as a small group will not have health status used as a factor in ratings. They will not be able to be required to have pre-existing condition exclusions or denied coverage for pre-existing conditions.

Right now, the Banking and Insurance Committee is considering, based on the feasibility of the study which they conducted and which I participated in last summer and fall, L.D. 182 as well as a couple of other bills, which would extend to 50 the small group coverage and freedom from pre-existing conditions exclusions.

It would also extend this coverage to the individual market so we would be taking care of some people in that way. However, I want to remind you that 70 percent of the people who are uninsured in this state are working, many of them at very low wages or for companies which do not offer health insurance so the problem for these people will not be solved until we pass a universal health insurance plan. Until that time, we do need to offer protection to these people so they can get the treatment for their occupational diseases and get the treatments soon enough to prevent a worsening of the disease for them. So, we will not have sufficient coverage through our health insurance bills even if we pass additional extensions of pre-existing condition exclusions this session.

I would urge you to consider that when you consider L.D. 687.

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 Clinton, Representative Clement, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 106

YEA - Adams, Ahearne, Aliberti, Beam, Bowers, Brennan, Cameron, Caron, Cashman, Chase, Chonko, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Cote, Daggett, Driscoll, Dutremble, L.; Faircloth, Farnsworth, Fitzpatrick, Gean, Gwadosky, Hale, Hatch, Heesch, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Ketterer, Kontos, Larrivee, Lemke, Martin, H.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Pouliot, Rand, Richardson, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Simonds, Skoglund, Sullivan, Swazey, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Walker, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bruno, Campbell, Carr, Clukey, Cross, DiPietro, Donnelly, Farnum, Farren, Foss, Gamache, Gould, R. A.; Gray, Greenlaw, Heino, Hillock, Joy, Kerr, Kneeland, Kutasi, Libby Jack, Libby James, Lindahl, Lipman, Look, Lord, MacBride, Marshall, Murphy, Nash, Nickerson, Norton, Ott, Pendexter, Plourde, Plowman, Poulin, Reed, G.; Reed, W.; Ricker, Robichaud, Simoneau, Small, Spear, Stevens, A.; Strout, Tardy, Taylor, Thompson, True, Tufts, Vigue, Whitcomb, Young, Zirkilton.

ABSENT - Carleton, Carroll, Cathcart, Dexter, Dore, Erwin, Kilkelly, Lemont, Marsh, Michael, Nadeau, Pendleton, Saxl, Stevens, K.; Winn.

Yes, 73; No, 63; Absent, 15; Paired, 0; Excused, 0.

73 having voted in the affirmative and 63 in the negative with 15 being absent, the Majority "Ought to Pass" Report was accepted, the bill read once.

Committee Amendment "A" (S-92) was read by the Clerk and adopted and the bill assigned for second reading, Thursday, May 20, 1993.

The Chair laid before the House the fifth tabled and today assigned matter:

HOUSE DIVIDED REPORT - Majority (10) "Ought Not to Pass" - Minority (3) "Ought to Pass" as amended by Committee Amendment "A" (H-259) - Committee on Banking and Insurance on Bill "An Act to Amend the Workers' Compensation Laws" (H.P. 530) (L.D. 714) TABLED - May 18, 1993 by Representative PINEAU of Jay. PENDING - Motion of same Representative to Reconsider whereby the Majority "Ought Not to Pass" Report was Read and Accepted.

Subsequently, the House reconsidered its action whereby the Majority "Ought Not to Pass" Report was accepted.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Kutasi.

Representative KUTASI: Mr. Speaker, Ladies and Gentlemen of the House: I just want to go into what the bill does. It gives an opportunity for small business in this state to opt that of Workers' Compensation Insurance. It doesn't say that they have to opt that, it just gives them an opportunity.

What the other alternatives are, of course, in the bill it says that they have to carry health insurance, carry liability insurance, disability for their workers and also they cannot opt out of the Fresh Start Program, which is the half a billion liability that you hear about in the Workers' Compensation situation.

It is an opportunity to give small business so that they can add up these two lines of what it costs for the Workers' Compensation Insurance what it costs to provide these other types of insurance. If providing health insurance and 24 hour coverage is less, then they go with that situation. If Workers' Compensation is less, then they go with that situation. Their employees are covered both ways. It gives an opportunity to small business to see both sides of an issue because a lot of businesses out there are running without any insurance, any Workers' Compensation, any health insurance, or they are making a decision of whether they should provide health insurance or lay off an employee. They are saying we are going to take off the health insurance and keep the employee on.

The other thing is large companies have an opportunity to self-insure. They have the opportunity to opt that or Workers' Compensation today. They add up the self-insurance line and what it costs to deal with an insurance company and a lot of them choose to self-insure. Small businesses have not had that opportunity and I urge your support and vote no on the "Ought Not to Pass" Report.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I will try to be brief but it is kind of a confusing issue and it is a major issue. It sounds good on face, let's let small businesses opt out — well, the problem with opting out is — at what risk I ask you? This bill's level of disability and risk for the business of being taken to court and the liability of claims in the health care is inadequate to protect the workers of the state. It is also inadequate to cover the costs, it is also inadequate in dealing with a lawyer's dream that this bill would create because basically it puts what we have tried to do since 1987 right back in, making it an attorney's free-for-all on who gets what and at what cost to what system.

The other things that are happening is that you and I both are having small business saying we need help. Well, last year part of the bill we passed on The Employers' Mutual Insurance Company, what we set up was that we needed relief for small business. Ladies and gentlemen, I can stand before you today to say that this is aggressively happening right now. What we have in front of the bureau is the Loss Free Credit Program which will enable, and I repeat, it will enable small businesses who have had no incident rate to save up to 15 percent.

What we have proposed is a control incentive rating plan, loss control rating plan, which will save employers up to 25 percent. In fact, we have

employers out there now that have no claims and we do now have set up for them ways that they can cut the premium cost dramatically and it will work.

The other problem with L.D. 714 is, if you say you are going to have people opted out at level 10 employees, what you do to the rest of the base of Maine employers — ladies and gentlemen, this is a short-term answer and I do not believe it is a responsible effort by this House to pass this legislation at this time. A lot of questions have been asked on this bill if we were to set up a pilot program dealing with several small businesses working this matter through. That, I believe, would have my support and I believe the committee would go for that; however, not at this time, not this bill.

What you are doing with this if you in effect pass what the Minority wants is you are doing a cost shift, another cost shift which doesn't answer our problem of Workers' Compensation. With what is going on in Washington right now and what is going on on the fourth floor of this building with health care, the medical part of Workers' Compensation coming under a health care plan, we are going to see dramatic changes in Workers' Compensation. That whole arena is going to have a whole new face come December so this is an ill-timed move I believe.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Plourde.

Representative PLOURDE: Mr. Speaker, Men and Women of the House: I feel this is a good opportunity to help small businesses. What has happened is that the small business arena has become a victim of the Workers' Compensation program.

This gives small businesses that employ 1 to 6 employees the option, I repeat, an option to provide alternative benefits to their employees with the strong encouragement to provide health care, which they have been forced to eliminate because of the high cost of Workers' Compensation.

If you noticed on your desk last week, there was an article distributed by myself about the rate increases that have gone into effect approximately 40 percent, some are much higher. Small businesses today do not have the same opportunities as larger companies. However, it seems that every time we talk about the small business sector, we always say that they are very important for our economy but yet every time we have an issue dealing with that group, we inhibit them to expand and to grow. I think this is an excellent opportunity, we already have a pilot program out there where the farmers have that same right and I think it is only right that we should give the small business group that same opportunity.

I urge you to oppose the pending motion. Mr. Speaker I request a roll call.

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

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to support the pending motion on the floor. What we are doing here is circumventing the purpose of "no fault" insurance. That is the purpose of Workers' Compensation, it is not your fault, it is not the employers fault — at the request of the employers when it was the first inception of Workers' Compensation.

Also, we are opening the door to tort — right now within the Workers' Compensation system, we have limitations on liabilities for loss of limb, etcetera. Under this, it will be limitless. Talk

about boundless and timeless, we will have endless suits in the courts. It will cost the employer much, much more than they are exposed to right now.

It does appear to be at this time a savings but I assure you that it is not a savings, it is going to be very, very costly.

I urge you to support the motion on the floor.

The SPEAKER: The Chair recognizes the Representative from Rome, Representative Tracy.

Representative TRACY: Mr. Speaker, Ladies and Gentlemen of the House: I ask you to accept the Majority "Ought Not to Pass" Report.

The Maine Employers' Mutual Insurance Company wrote us a letter and they asked us to please, please do not tinker with this very delicate, fragile system for a year. We need time to have this new insurance company nurture and if we start tinkering with this, we are not doing what we set out to do. Even though I did not vote for those reforms when it came to this body, I am asking you to let this new system nurture and then after a year, we can set out and try to do what the good Representative Plourde would like to have done.

The SPEAKER: The Chair recognizes the Representative from Nobleboro, Representative Spear.

Representative SPEAR: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to vote against the pending motion "Ought Not to Pass." I stand before you today and have seen the exemption that the farming community has seen with this in the Workers' Compensation law.

As it is now in the farming business, if you have less than 6 employees, you are exempt and can use the liability insurance. I do employ people under that law and I have had an injury or two and it has been taken care of with no problem at all. It saves me, I know, a lot of money over the years in premiums.

During my course of campaigning in talking with businesses throughout my district, this is one that I have come upon with small business after small business that says they just do not have any insurance, they cannot afford it. Or, they tell me, yes, I would employ two or three more people if I could afford it but I am going to survive with just one. We worry about the unemployment we have in our state, I believe that this would pick up the employment and help solve some of the problems.

Once again, I have seen this exemption work very well and I think if we want to help the small businesses in Maine move forward, we should vote against the pending motion on the floor.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, Men and Women of the House: I think that the good Representative from Nobleboro is correct and many others feel that the exemption for the farming works. I think that is true.

I just want to point out my reservation to this particular bill and why I support the Majority "Ought Not to Pass." My reservation is that if you settle in with 6, 10, 15 or whatever it might be and they can opt out of the Workers' Comp pool, that would, in my mind, trigger an incentive to drop my employees down to that number so I could opt out of the pool if I am just above that level. Also, if we did something to resolve that problem, it is also a disincentive to grow and don't we want small businesses to grow in the State of Maine? In fact, that is how our economy starts to thrive. If we can

have small businesses grow into larger businesses, we are helping the State of Maine. If we set a number at 6, 10, 15 or whatever it might be, then as soon as those employers get to feel like they can grow beyond 15, let's say, they are going to say, well, I can't afford to do that because now I have to go onto Workers' Compensation and leave the exemption. I think you ought to consider the incentives that are involved in this particular bill and that's why I feel strongly that I think we should all support the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Vassalboro, Representative Mitchell.

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

I would pose this question to anyone from the committee or the sponsor who could answer. Actually, there are couple of questions.

We have heard much talk about the agricultural exemption — I would like to know if the limits here mirror exactly the agricultural exemptions and what the experience has been in Maine using those exemptions in terms of the injured worker who worked on the farm?

I would also like to know, is this indeed optional, one can opt to out? If so, if you opted out of the system, are you liable for suit?

The SPEAKER: The Representative from Vassalboro, Representative Mitchell, has posed two questions through the Chair to anyone 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: I can't speak to the first part of the question because the data I had was I guess not thorough to my liking to base a decision on it. That is one of the reasons I voted on the Majority "Ought not to Pass" Report. I wasn't shown information that convinced me of that.

Secondly, the Representative asked the question that is exactly accurate on what we do to the base when we do that. I think that question is why this body should go with the "Ought Not to Pass" Report. What you are doing is basically dismembering the base at the risk of those left without knowing where it is going. The levels on the original bill weren't what the liability and the disability should have been. There is a committee amendment up, I don't know if that addresses that part but I know the figures we saw on the accidents for the farming community versus that of a manufacturing base, you are comparing apples and oranges. Therefore, I believe it would be in the best interest of this body and small business, especially small businesses — if you let this happen and you have a pile opt out, then once they start getting sued, start losing their businesses, then they are going to want to jump back in. Once they jump back in, that changes the face of the pool again. Once you change the face of the pool, then you immediately affect the fate of those that are in that pool. Therefore, you are putting everyone at risk by allowing this without having the big questions answered satisfactorily.

The SPEAKER: The Chair recognizes the Representative from Jonesboro, Representative Look.

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

I will give you a hypothetical situation, if a

small business who is under the 6 employee range has had a case of injury and was under Workers' Compensation, however that injury has not developed to a point of disability but it does have the potential in the future to do so — if they opt to go to the newer plan and that disability develops, is there any coverage to cover that disability in the newer plan?

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

The Chair recognizes the Representative from Sanford, Representative Hale.

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I will just call upon my knowledge that I have any existing injury that is covered under a present insurance fund will be covered by the present plan and any future injuries will be covered under a new policy. This is the usual and I don't know if we have anything unusual in the plan, but I would say that it is something pre-existed prior to buying a new policy.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: I want to also partially answer the good Representative from Jonesboro's question. Under the Workers' Compensation rules, you the employer, are liable for the injuries or illnesses for your employee that occur in the workplace. What you do is you transfer that presently to an insurance company and were you to opt out of that insurance program, it does not release you however from that liability. If you had a condition of a worker that continued to deteriorate over the years, you as the employer would still be eligible for those benefits, either out of your own pocket to a court suit or however it may settle out, if you no longer had the insurance.

I hope that answers your question.

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

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

I would like to ask Representative Plourde if a work injury or a purported work injury exists under this new plan, who makes the decision whether it is a work-related injury or not? Do you go to the Workers' Compensation Board or how is that decided?

The SPEAKER: The Representative from Portland, Representative Rand, has posed a question through the Chair to Representative Plourde of Biddeford who may respond if he so desires.

The Chair recognizes that Representative.

Representative PLOURDE: Mr. Speaker, Ladies and Gentlemen of the House: With this new plan, they would not have to go before a Workers' Compensation Board so who makes the decision is obviously the two parties that would be involved and that would be the insurer and the insured, which is normal in the private sector as far as the non-work programs that are out there.

Just to add something, this bill that is being proposed is not going to create a mass exodus for small businesses to get out of the Workers' Compensation System. All it does is provide an alternative for those small businesses who could have an alternative. It only represents less than 14 percent of the work force in this state. It may create a greater opportunity for job growth.

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 Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: The previous comments forced me to get up for some clarity.

Yes, it will in fact create a mass exodus at the risk of the employees of those businesses and the employers of those businesses. I just want you to know that.

The other thing is that there is no current insurance product available out there which does what this bill purports to do. Those of us who deal with insurance matters as we all have also know that any product out there is going to be the cost of the reserves and of the administration and of the actual paying of claims of that. When those products are set up, it is going to be the "steal deal" I think the sponsors of this legislation are saying that it is going to be. Just note that that is going on and also know that the benefits of this proposed legislation are not comparable to that to protect your constituents back home of workplace injury. There is no setting up of worker safety incentives — all these parts haven't been thought through and stated in this legislation. Just know that as you press your button.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Plourde.

Representative PLOURDE: Mr. Speaker, Ladies and Gentlemen of the House: Just to make one additional point. Yes, there are some incentives, the incentive is, if you give the small business sector the opportunity to opt out of Workers' Compensation, it can't provide a 24 hour coverage program for both benefits which is health care benefits and disability benefits.

Information has also been provided that probably better cooperation between the smaller employer with their employees that you probably can provide a benefit package and not deal with the confrontation that many of the employees are faced with when they file a Workers' Compensation claim.

The SPEAKER: The pending question before the House is the motion of the Representative from Jay, Representative Pineau, that the House accept the Majority "Ought Not to Pass" Report.

Pursuant to House Rule 19, the Speaker excused himself from voting because of a conflict of interest.

The SPEAKER: The pending question before the House is the motion of the Representative from Jay, Representative Pineau, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 107

YEA - Adams, Aikman, Aliberti, Beam, Bowers, Brennan, Cameron, Carleton, Cashman, Chase, Chonko, Clark, Clement, Cloutier, Coffman, Coles, Constantine, Cote, Daggett, Dore, Driscoll, Dutremble, L.; Faircloth, Farnsworth, Fitzpatrick,

Gwadosky, Hale, Hatch, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Johnson, Joseph, Kerr, Ketterer, Kontos, Larrivee, Lemke, Libby, James, Martin, H.; Melendy, Michaud, Mitchell, E.; Mitchell, J.; Morrison, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Poulin, Pouliot, Rand, Richardson, Rotondi, Rowe, Ruhlin, Saint Onge, Simonds, Skoglund, Stevens, K.; Sullivan, Swazey, Thompson, Townsend, E.; Townsend, L.; Tracy, Treat, Walker, Wentworth.

(Off Record Remarks)

On motion of Representative Joseph of Waterville,
Adjourned at 10:25 a.m. until Thursday, May 20,
1993, at 8:35 a.m..

NAY - Ahearne, Anderson, Ault, Bailey, R.; Barth, Bennett, Birney, Bruno, Campbell, Caron, Carroll, Clukey, Cross, DiPietro, Donnelly, Farnum, Farren, Foss, Gamache, Gean, Gould, R. A.; Gray, Greenlaw, Heino, Hillock, Joy, Kneeland, Kutasi, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Murphy, Nash, Nickerson, Ott, Pendexter, Plourde, Plowman, Reed, G.; Reed, W.; Ricker, Robichaud, Rydell, Simoneau, Small, Spear, Stevens, A.; Strout, Tardy, Taylor, True, Tufts, Vigue, Whitcomb, Young, Zirkilton.

ABSENT - Bailey, H.; Carr, Cathcart, Dexter, Erwin, Jalbert, Kilkelly, Lemont, Libby Jack, Michael, Nadeau, Norton, Pendleton, Saxl, Townsend, G.; Winn.

EXCUSED - The Speaker.

Yes, 74; No, 60; Absent, 16; Paired, 0;
Excused, 1.

74 having voted in the affirmative and 60 in the negative with 16 being absent and 1 having been excused, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

BILL HELD

Bill "An Act to Change the Time of the State Primary" (H.P. 488) (L.D. 646)
- In House, Majority "Ought Not to Pass" Report of the Committee on Legal Affairs read and accepted.
HELD at the Request of Representative GRAY of Sedgwick.

Representative Gray of Sedgwick moved that the House reconsider its action whereby the Majority "Ought Not to Pass" Report was accepted.

On motion of Representative Gwadosky of Fairfield, tabled pending the motion of Representative Gray of Sedgwick that the House reconsider its action whereby the Majority "Ought Not to Pass" Report was accepted and specially assigned for Thursday, May 20, 1993.

The following item appearing on Supplement No. 1 was taken up out of order by unanimous consent:

SENATE PAPER

Resolve, Authorizing the Conveyance of Certain Public Lands in Newcastle (S.P. 502) (L.D. 1525) (Governor's Bill)

Came from the Senate, referred to the Committee on Energy and Natural Resources and Ordered Printed.

Was referred to the Committee on Energy and Natural Resources in concurrence.