

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

**One Hundred And Sixteenth Legislature**

OF THE

**State Of Maine**

**VOLUME III**

**FIRST REGULAR SESSION**

**Senate**

December 2, 1992 to May 18, 1993

STATE OF MAINE  
ONE HUNDRED AND SIXTEENTH LEGISLATURE  
FIRST REGULAR SESSION  
JOURNAL OF THE SENATE

In Senate Chamber  
Tuesday  
January 12, 1993

Senate called to Order by the President, Dennis L. Dutremble of York.

Prayer by Pastor Wilmot Dowdy of the Center Vassalboro Community Baptist Church.

**PASTOR WILMOT DOWDY:** Almighty God, loving Father, guiding Spirit, just Judge and arbitrator from whom no secrets are hidden and to whom all persons are important, we ask your guidance today. We come in respect to our needs and the opportunity to serve you to the responsibilities challenging us this day. May our deliberations and decisions reflect our concern for all the persons in our State. Grant that we will have the forbearance to accept that which we cannot change. Grant that we will have the courage to act when we clearly see what needs to be done. Grant that we will have the wisdom to know the difference. We thank you Lord that you are always with us granting new and fresh hope and creating solutions to problems that seem to have no solution. In our defeats, discouragements and mistakes, in our triumphs, determinations and successes we affirm our faith in your providence. We commit this day's deliberations into your hands praying in the name of our Lord Jesus Christ. Amen.

Reading of the Journal of Friday, January 8, 1993.

**PAPERS FROM THE HOUSE**

**House Papers**

Bill "An Act to Ensure the Viability of the Maine Employers' Mutual Insurance Company"  
H.P. 23 L.D. 26

Comes from the House referred to the Committee on **BANKING & INSURANCE** and **ORDERED PRINTED**.

Which was referred to the Committee on **BANKING & INSURANCE** and **ORDERED PRINTED**, in concurrence.

Bill "An Act to Amend the Lounge License Provisions"  
H.P. 19 L.D. 21

Comes from the House referred to the Committee on **LEGAL AFFAIRS** and **ORDERED PRINTED**.

Which was referred to the Committee on **LEGAL AFFAIRS** and **ORDERED PRINTED**, in concurrence.

Bill "An Act Regarding Closed Clam Flats" (Emergency)  
H.P. 18 L.D. 20

Comes from the House referred to the Committee on **MARINE RESOURCES** and **ORDERED PRINTED**.

Which was referred to the Committee on **MARINE RESOURCES** and **ORDERED PRINTED**, in concurrence.

Bill "An Act to Amend the Terms of Public Utilities Commissioners"  
H.P. 21 L.D. 23

Comes from the House referred to the Committee on **STATE & LOCAL GOVERNMENT** and **ORDERED PRINTED**.

On motion by Senator **VOSE** of Washington referred to the Committee on **UTILITIES** and **ORDERED PRINTED** in **NON-CONCURRENCE**.

Sent down for concurrence.

Bill "An Act to Prohibit People from Riding in the Back of Open Pickup Trucks"  
H.P. 22 L.D. 24

Comes from the House referred to the Committee on **TRANSPORTATION** and **ORDERED PRINTED**.

Which was referred to the Committee on **TRANSPORTATION** and **ORDERED PRINTED**, in concurrence.

**COMMUNICATIONS**

The Following Communication: S.P. 31

116TH MAINE LEGISLATURE

January 8, 1993

Chairpersons  
Joint Standing Committee on Banking and Insurance  
116th Legislature  
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated William N. Lund of Falmouth for reappointment as Administrator of the Bureau of Consumer Credit Protection.

Pursuant to Title 9A, MRSA Section 6-103, this nomination will require review by the Joint Standing Committee on Banking and Insurance and confirmation by the Senate.

Sincerely,

S/Dennis L. Dutremble  
President of the Senate

S/John L. Martin  
Speaker of the House

Which was **READ** and **REFERRED** to the Committee on **BANKING AND INSURANCE**.

Sent down for concurrence.

The Following Communication:

**DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT  
STATE HOUSE STATION 59  
AUGUSTA, MAINE 04333**

To: Dennis L. Dutremble, President of the Senate  
From: Michael W. Aube, Commissioner  
Date: January 5, 1993  
Re: 1992 Maine Jobs Bond Creation Program  
A Report to the 116th Legislature

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Pursuant to Maine P.L. 1992, Chapter 849, the Department of Economic and Community Development is pleased to report on the 1992 Maine Job Bond Creation Program.

The attached report takes the form of an evaluation measuring not only the impact, but proposes to make recommendations for future municipal infrastructure bond issues.

Should you have any questions or wish further information, please do not hesitate to contact me.

Which was **READ** and with Accompanying Papers **ORDERED PLACED ON FILE**.

**SENATE PAPERS**

Bill "An Act Permitting the Bureau of General Services to Provide Insurance to Certain Group Homes for Children and for Persons with Mental Retardation" S.P. 35 L.D. 41

Presented by Senator **LUTHER** of Oxford  
Cosponsored by Representative **ERWIN** of Rumford and Representative **LORD** of Waterboro

Which was referred to the Committee on **BANKING & INSURANCE** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act Concerning Costs Related to Local Education Administration" S.P. 32 L.D. 38

Presented by Senator **BERUBE** of Androscoggin  
Cosponsored by Senator **HANDY** of Androscoggin and Representative **NICKERSON** of Turner

Which was referred to the Committee on **EDUCATION** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Provide Restitution for Vandalism" S.P. 33 L.D. 39

Presented by Senator **VOSE** of Washington  
Cosponsored by Representative **TOWNSEND** of Eastport

Bill "An Act to Amend the Laws Pertaining to the Visitation Rights of Grandparents" S.P. 34 L.D. 40

Presented by Senator **BERUBE** of Androscoggin  
Cosponsored by Representative **PENDLETON** of Scarborough, Representative **TOWNSEND** of Eastport and Senator **VOSE** of Washington

Bill "An Act to Reestablish Capital Punishment in the State" S.P. 36 L.D. 42

Presented by Senator **BEGLEY** of Lincoln (By Request)

Which were referred to the Committee on **JUDICIARY** and **ORDERED PRINTED**.

Sent down for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

**ORDERS**

**Senate Resolution**

On motion by Senator **CIANCHETTE** of Somerset (Cosponsored by: Senator **MCCORMICK** of Kennebec, Senator **KIEFFER** of Aroostook, Senator **ESTY** of Cumberland) the following Senate Resolution:

**SENATE RESOLUTION EXPRESSING THE OPINION OF THE SENATE THAT THE LEGISLATIVE COUNCIL FORM A TASK FORCE**

WHEREAS, the Superintendent of Insurance has recently authorized a workers' compensation rate structure for the Maine Employers' Mutual Insurance Company at a level higher than that in effect in the residual market pool in 1992; and

WHEREAS, the intent of the Legislature in establishing the mutual company was to achieve a reduction in rates; and

WHEREAS, such an increase would be burdensome on Maine employers and their employees and unacceptable to the Legislature; now, therefore, be it

RESOLVED: That it is the sense of the Senate that the Legislative Council should authorize the formation of a task force to rapidly design and report a remedy to the Joint Standing Committee on Banking and Insurance in order that the Legislature may act before greater damage is done to the Maine economy.

Which was **READ**.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This is the Resolution that we talked about last Friday dealing with the increase in Workers' Compensation rates and this Resolution says "Resolved: That it is the sense of the Senate that the Legislative Council should authorize the formation of a task force to rapidly design and report a remedy to the Joint Standing Committee on Banking and Insurance in order that the Legislature may act before greater damage is done to the Maine economy." If there are any questions I'd be happy to answer them. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. May I ask the mover of the Resolution his explanation of reported remedy to the Joint Standing Committee?

**THE PRESIDENT:** The Senator from Lincoln, Senator **BEGLEY** has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I didn't understand the question.

**THE PRESIDENT:** The Chair recognizes the Senator from Lincoln, Senator Begley.

Senator **BEGLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Being new and reading a Resolve that tells me they're going to rapidly design and report a remedy to a Committee, before I vote on it I would be curious as to the situation of reporting a remedy to a Committee. The remedy being ramifications that are quite sincere and serious in a situation of Workers' Compensation so I'm a little leery standing here and saying I would vote for it without some idea from the Resolve person, if he can give me some understanding of what he's trying to do. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Somerset, Senator Cianchette.

Senator **CIANCHETTE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Perhaps I can enlighten the Senator from Lincoln somewhat, in that I feel there is an emergency that the insurance companies are going to be sending out invoices to businesses that substantially increase their cost of Workers' Compensation. In a meeting of the Legislative Council yesterday, members of the MEMIC insurance company, the employee's insurance company, came there explaining what they've done and why their rates are where they are. There was a forty five minute to an hour discussion about why they are where they're at where they are today and it looks to me like they, as an insurance company, are required to do about what they've done. They said, both their attorney and one of their members, said that they understand that if these bills go out that there will be, and I quote, "they will fatally impact a number of businesses in the State of Maine." Fatally impact, that means putting them out of business, if these rates are allowed to go. I don't think that's acceptable. I don't know the solution, I don't suggest that I have the solution today but this is something that, in my opinion, can't wait. This legislature needs to address this and find out if there are ways that we can help this situation out and not put thousands of Maine workers out of jobs at a time when we should be going in the other direction, creating jobs for Maine people. I think it's critical, I think it's important that someone look at this right away quickly and I think that it's going to take expertise from outside the Legislature as well as within and perhaps a task force could come up with some ideas. Hopefully something good could come out of it. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This Resolution that we're considering, it seems to me, has the potential of bringing us back to where we were in the whole debate on Workers' Compensation in the last Session of the Maine Legislature. Inasmuch as the whole thrust of it was that Workers' Compensation was

too expensive, which just about everybody acknowledged. There was some discussion at that time that this particular Bill that was passed wasn't solving the problem like a lot of people thought it was supposed to do. Apparently, to some degree anyway, that may be true. I wonder if we get back involved in the discussion of this at this time, if we're not bringing it right back to where it was before. It's obviously a very volatile, delicate issue. Maybe we're returning to the same place. I don't know the answer to it either, I'm just expressing a fear that I have that if we're not careful we'll be back where we were before, and take away the machinery that we created with this new Workers' Compensation apparatus to try to solve these problems. I don't have an opinion, yes or no, on this but I would like to have some thought, out loud I guess, as to whether or not that was considered when the Resolution was drafted and introduced. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise to support the good Senator from Somerset, Senator Cianchette along with his co-sponsors in reference to this Resolution. As one of the few members of this chamber last Session who voted against the ultimate recommendation of the Blue Ribbon Commission, and I believe you could count those people on one hand, I have grave reservations about many components of that Bill, not the least of which was this creation of MEMIC. I know from having talked to the good Senator from Somerset before he was a member of this chamber that our views on this issue, which took quite a bit of our time last Session, could not be further apart. I feel though that I should impart to the body some information which has come to me, which I guess I would characterize as more than a rumor since I've seen some reports of it in the newspaper, in reference to the staffing of MEMIC and some of the costs which MEMIC is starting to incur, that I have some concerns about the direction that particular Board is taking. I would indicate to the chamber that it has been made known to me that that Board never went out to bid, for example, for its legal services, in reference to who is now representing the Board. There are eleven different little components that will have legal representation for claims brought in different areas, only one law firm will be representing those eleven different entities as I understand it. Again, those services were never put out to bid. Now costs associated with those services will be astronomical. That is a great deal of business to give to one particular law firm. It is not in the best interest of those businesses not to have had that put out to bid. We put everything out to bid around here. We require our University, which is a quasi-governmental agency, to put their matters out to bid. We require the Maine State Housing Authority to put their issues out to bid. We require anything that has to do with transportation to be put out to bid. That is one little area that I am concerned with that is going to cause costs for our businesses to skyrocket, once again, in this area of Workers' Compensation.

I think if one thing people heard here loud and clear last Session was from business, they didn't care why their costs were going up, they just wanted them to come down. I think if what is projected here by way of the members on that Board and spokespeople for that Board, that costs are going to go up, that's certainly not the bargain that Maine businesses

thought they were going to get with this law that was passed here last October. I think it is only fair that this Resolution be passed and that somebody get to the bottom of why these costs would go up the way that they seem to be projected they're going to go up. I would join with the sponsor and others who probably know a little more about the current situation, such as the good Senator from Kennebec, Senator McCormick, in passing this Resolution. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I appreciate the concerns of the Senator from Penobscot, Senator Pearson, about whether considering such a resolution would re-open the Workers' Compensation debate and, in fact, during yesterday's meeting of the Legislative Council with the MEMIC's Board and their counsel, their attorney, we heard that same concern. Now I guess I'm always an optimist and never say die and do not ever think that the elected representatives of this State should not be able to look into or discuss the very urgent matter of Workers' Compensation and do that, as I believe you can, in an amicable and helpful way. Now many people are concerned on both sides, members of the MEMIC Board and interested observers, that the rate that MEMIC has set, for those of you who are unfamiliar I apologize for throwing around anagrams already, but MEMIC stands for Maine Employers Mutual Insurance Company and it was created by October's Workers' Compensation reform and it basically is a new way of dealing with the residual market where 92% of Maine's employers were. We are basically taking the residual market and we are allowing them to self-insure in the form of MEMIC. MEMIC's rates were set and were approved by the Superintendent of Insurance one day before Christmas and those rates were a 9.2% premium increase on one hand and a 15% capitalization, which if you add together those two, because it's all the same when it's taken out of the pockets of employers, that is a 25% increase. That, added to the 8.9% increase that the Superintendent allowed in November and about the 3 or 4 or 5%, depending on how you count it, fresh start increase, you're getting to talk some real money. That is why there is concern about this and I think it's legitimate concern about this. Many of us including, I would say, members of the Board of MEMIC, have said that yes, please if you can help us with that 15% capitalization and lower that initial hit on employers, that would be most helpful. So discussions are going forward, on the phone and in private and I think it would behoove our State and it would behoove this body and the other body to have those discussions in a little bit more organized way and to come up with, if we can, some way of helping MEMIC out with that 15% capitalization. Many people believe that we can, there are many ideas floating, including a revenue bond.

The reason why I'm interested in this particularly is that we who were on the Banking and Insurance Committee last year, and the Senator from Cumberland, Senator Conley, is probably sick of hearing this but in my humble opinion MEMIC is the best solution that we have to our Workers' Compensation problem. If it's handled correctly it can create a downward market pressure on Workers' Compensation premiums in this State. It cannot do that, however, with a 25% initial increase. It will basically allow the other insurance companies in the State, the commercial insurers, to cherry pick, that is the technical term

used in the industry, to cherry pick the 90% of the companies that are now in MEMIC, take all the good risks, take all the safe companies and leave the larger, quasi-public, private entity of MEMIC holding all the bad risks. That would also come back to haunt us. This very technical subject that we find ourselves faced with in the early days of this session, and as dry as it is, I urge you to get up to speed on this or read all you can about it or ask any questions you may have of I or Senator Kieffer or Senator Carey and others. It's just essential to our final solution to the Workers' Compensation problem that MEMIC has at least a one or two year healthy start where it can have competitive rates, so that the commercial insurers, and I urge you, for your reading, I refer you to the November 18th rate case filed by the Superintendent of Insurance. I think on page 18 or 19 has a scathing attack on the lost cost and audit practices of the commercial insurers in Workers' Compensation. It makes for fascinating reading, it will not put you to sleep I can assure you and it will really make you understand the importance of having a rate set in this other part of the market that will force the commercial insurers into better servicing practices, better auditing practices, better lost cost data processes. So that's the context and I guess my thought to you is that this is the kind of technical discussion that, so far, has gone quite amicably. I think we can have it amicably, I think everyone wants to solve this problem. No one wants to have businesses fatally affected. Senator Kieffer of Aroostook and I have agreed totally on this so far and we're on two different parties. I and another member of MEMIC's Board who are on different parties have agreed on this. I really think there is a building consensus on this and I think that discussion will only help us solve this problem. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Harriman.

Senator **HARRIMAN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise to state that I will support this measure but in doing so I ask you to keep two things uppermost in our minds. Number one, the capitalization issue of this new mutual insurance company. We have to ask ourselves if we would allow another insurance company in the State to come in and do business as we are attempting to do with this company. I think it's important that we remember that this company's free standing should have it's own financial integrity and we should expect it to live up to the same criteria as any other insurance company doing business in the State of Maine. Second, I would remind you that one of the central issues passed in the Legislature last Session created a new Labor Management Committee Board and I would encourage and strongly suggest that if a task force is created that a significant proportion of that task force be made up of members of that Board. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator McCormick.

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I guess I just want to respond to one of the comments from the good Senator from Cumberland, Senator Harriman. This new company, MEMIC, is not so much like an insurance company as it is like a group self-insurer. They each have different standards under Maine law. Although I totally agree with you, we need to make everything according to Hoyle, part of the discussion over these rates is how do we treat this new entity?

Do we make it play by the group self-insured rules or do we make it play by the insurance company rules? Right now it seems to many of us that we have taken the strictest rules from each one and made it play by both. In other words we have not given it the credit for the incredibly good servicing practices that the group self-insurers have had and we have instead charged it with, or assumed that it will have the poor servicing practices that the commercial insurers and carriers have had in the residual market. That's part of the discussion and I would welcome your attendance at this discussion that, hopefully, we are going to have and any input that you might have. Thank you.

Which was **ADOPTED.**

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Off Record Remarks

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Senator **BALDACCI** of Penobscot was granted unanimous consent to address the Senate off the Record.

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Off Record Remarks

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Senator **BALDACCI** of Penobscot was granted unanimous consent to address the Senate on the Record.

Senator **BALDACCI:** Thank you Mr. President, Ladies and Gentlemen of the Senate. There has been something that has been going on for the last couple of weeks that really disturbs me. I am a small business person and I try to be very frugal in my day to day affairs and I try to be frugal when I am here in the Legislature with the people's money, so I'm not suggesting that the Treasury's doors be opened but there have been these reports that Maine has been ranked fourth in the country, third in the country, ninth in the country as far as the tax burden of Mainers in relationship to their income in relationship to the fifty states. I would just like you to know the facts, and these papers will be circulated to you, and it's going to be something that I am going to continually try to put in perspective. For your information, according to the magazine's 1992 U.S. Census Bureau's figures, an income of \$50,000 for a household, the Maine people ranked twentieth in the country as far as that tax burden, on a \$50,000 household. If you want to use Money Magazine's \$70,000 or \$80,000 income for a household you're talking about less than 1 1/2% of the households in the State of Maine. Less than 1 1/2% of the households in the State of Maine make that much money, households. So when you're talking about taxes in the State of Maine, and it drives me nuts if I hear one person say that Maine is ranked fourth, Maine is ranked third, and every year Money magazine does it. This is the second time they did it. The first time they did it we had a \$125,000 Commission to look into the inconsistencies and

irregularities in taxes, which we only spent \$10,000 or \$15,000 of and then we turned the rest back into the General Fund because we thought it was a wise thing to do. Now it comes out again, so I'm not suggesting that we're all relatively easy here and things are going along well, any amount of taxes you pay is unnecessary to most people and we would like to reduce it, but I just think that it's important, and the information is going to be on your desks as I have asked the Senate Chamber Staff to help me circulate it, but in fact we rank twentieth as it pertains to \$50,000 income. It is something that we should continue to work on, but you should at least know where you are. It's very important as we go through the process in the Taxation Committee this year, we're going to continually gauge what other states are doing, what the National Government is doing, so that Maine is in synch and not an island unto itself, because we do have to compete. We can't be uncompetitive. If you see people or hear people or read things that talk about Maine being fourth or fifth or whatever, just remember the information is available in the fiscal office and is going to be circulated, that Maine ranks twentieth with U.S. Census Bureau figures, at \$50,000 or less income. Thank you.

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On motion by Senator **BUSTIN** of Kennebec,  
**ADJOURNED** until Thursday, January 14, 1993, at 4:00  
in the afternoon.