

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

On motion by Senator ESTY of Cumberland, the Senate RECEDED and CONCURRED.

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

In Senate Chamber
Monday
March 15, 1993

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

Prayer by Reverend Doctor Stephen Tolander of Veterans Administration in Togus.

REVEREND DOCTOR STEPHEN TOLANDER: Thank you Mr. President. Let us pray. Oh God of grace, justice and mercy we ask your divine blessing today on this Session of the Maine State Senate. Give wisdom and guidance to these elected officials that they may faithfully execute the trust which the voters of this State have bestowed upon them. Give them wisdom and guidance to discern and choose the best course of action amongst the many needs that come before them. These things we pray in your holy name. Amen.

Reading of the Journal of Wednesday, March 10, 1993.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-concurrent Matter

SENATE REPORTS - from the Committee on **BUSINESS LEGISLATION** on Bill "An Act to Establish Hours of Education for the Practice of Public Accountancy" S.P. 52 L.D. 73

Majority - **Ought Not to Pass.**

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-33).**

In Senate, March 9, 1993, with the Reports **READ** and Bill and Accompanying Papers **RECOMMENDED** to the Committee on **BUSINESS LEGISLATION.**

Comes from the House the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED** in **NON-CONCURRENCE.**

Joint Resolutions

The Following Joint Resolution: H.P. 625

JOINT RESOLUTION COMMEMORATING YOM HASHOAH, THE DAYS OF REMEMBRANCE OF THOSE WHO SUFFERED AS VICTIMS OF THE HOLOCAUST

WHEREAS, 51 years ago, 6,000,000 Jews were murdered in the Nazi Holocaust as part of a systematic program of genocide and millions of other people suffered as victims of Nazism; and

WHEREAS, April 19th is the 50th anniversary of the Warsaw Ghetto uprising; and

WHEREAS, the people of the State of Maine should always remember the atrocities committed by the Nazis so that such horrors are never repeated; and

WHEREAS, the people of the State of Maine should always remember those who liberated the Nazi concentration camps, some at the cost of their lives and others with lifelong emotional suffering, as holding an honored place in our history; and

WHEREAS, the people of the State of Maine should continually rededicate themselves to the principle of equal justice for all people, remain eternally vigilant against all tyranny and recognize that bigotry provides a breeding ground for tyranny to flourish; and

WHEREAS, April 18, 1993 has been designated internationally as a Day of Remembrance of the Victims of the Nazi Holocaust, known as Yom Hashoah; and

WHEREAS, the national community pursuant to an Act of Congress will be commemorating the week of April 18th to April 25th as the Days of Remembrance of the Victims of the Nazi Holocaust; and

WHEREAS, it is appropriate for the people of the State of Maine to join in this international commemoration; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Sixteenth Legislature, now assembled in the First Regular Session, on behalf of the people we represent, pause in solemn memory of the victims of the Nazi Holocaust, and urge one and all to recommit themselves to the lessons of the Nazi Holocaust through this international week of commemoration and express our common desire to continually strive to overcome prejudice and inhumanity through education, vigilance and resistance; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the United States Holocaust Memorial Council in Washington, D.C., on behalf of the people of the State of Maine.

Comes from the House **READ** and **ADOPTED**.

Which was **READ** and **ADOPTED**, in concurrence.

Bill "An Act to Allow the Bureau of General Services to Provide Insurance Services for Elementary and Secondary Schools in the State"
S.P. 297 L.D. 883

Presented by Senator **CLEVELAND** of Androscoggin
Cosponsored by Senator: **PINGREE** of Knox,
Representatives: **COLES** of Harpswell, **FARNSWORTH**
of Hallowell, **KILKELLY** of Wiscasset, **MITCHELL** of
Vassalboro, **MORRISON** of Bangor

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

Sent down for concurrence.

COMMUNICATIONS

The Following Communication: S.P. 294

116TH MAINE LEGISLATURE

March 10, 1993

Senator Gerard P. Conley, Jr.
Rep. Constance D. Cote
Chairpersons
Joint Standing Committee on Judiciary
116th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Leigh Ingalls Saufley of Portland for appointment as a Justice of the Maine Superior Court.

Pursuant to the Constitution, Article V, Part 1, Section 8, this nomination will require review by the Joint Standing Committee on Judiciary 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 **JUDICIARY**.

Sent down for concurrence.

Bill "An Act Requiring School Suspension or Expulsion in Cases Involving Dangerous or Concealed Weapons"
S.P. 287 L.D. 857

Presented by Senator **HANLEY** of Oxford

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

Sent down for concurrence.

Bill "An Act to Amend the Municipal Subdivision Laws"
S.P. 300 L.D. 886

Presented by Senator **CLEVELAND** of Androscoggin

Which was referred to the Committee on **ENERGY & NATURAL RESOURCES** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act Regarding the Penalty for Failing to Register a Deer"
S.P. 289 L.D. 859

Presented by Senator **HALL** of Piscataquis

Which was referred to the Committee on **FISHERIES & WILDLIFE** and **ORDERED PRINTED**.

Sent down for concurrence.

Off Record Remarks

SENATE PAPERS

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

Presented by Senator **FOSTER** of Hancock

Bill "An Act to Amend the Laws Governing the Effect of a Tender in Foreclosure Actions"
S.P. 291 L.D. 861

Presented by Senator **HANLEY** of Oxford

Bill "An Act to Clarify Mandatory Waiver Authority Concerning Construction Requirements"
S.P. 292 L.D. 862

Presented by Senator **FOSTER** of Hancock (By Request)

Bill "An Act to Establish a Limit on Noneconomic Damages in Medical Malpractice Actions"
S.P. 293 L.D. 880

Presented by Senator **BERUBE** of Androscoggin
Cosponsored by Senators: **CIANCHETTE** of Somerset, **HANLEY** of Oxford, Representative: **GRAY** of Sedgwick

Bill "An Act to Extend the Commission to Study the Future of Maine's Courts" (Emergency)
S.P. 303 L.D. 919

Presented by Senator **CONLEY** of Cumberland
Cosponsored by Senator: **HANLEY** of Oxford, Representative: **COTE** of Auburn
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

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

Sent down for concurrence.

Bill "An Act to Reform the Campaign Finance Laws"
S.P. 296 L.D. 882

Presented by Senator **WEBSTER** of Franklin

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

Sent down for concurrence.

Bill "An Act Regarding County Contingent Account Limits"
S.P. 286 L.D. 856

Presented by Senator **BEGLEY** of Lincoln
Cosponsored by Representative: **LOOK** of Jonesboro

Bill "An Act to Reestablish a Portion of the Boundary between Lincoln and Kennebec Counties"
S.P. 288 L.D. 858

Presented by Senator **BEGLEY** of Lincoln
Cosponsored by Representative: **MITCHELL** of Vassalboro

Bill "An Act Regarding Lobbying"
S.P. 295 L.D. 881

Presented by Senator **LAWRENCE** of York

Bill "An Act to Create a State Municipalities Investment Pool"
S.P. 298 L.D. 884

Presented by Senator **CLEVELAND** of Androscoggin
Cosponsored by Senator: **BEGLEY** of Lincoln, Representatives: **KILKELLY** of Wiscasset, **MITCHELL** of Vassalboro, **MORRISON** of Bangor

Bill "An Act to Implement Constitutional Provisions Requiring the Funding of Mandates Imposed on Local Units of Government"
S.P. 299 L.D. 885

Presented by Senator **CLEVELAND** of Androscoggin
Cosponsored by Senator: **BUTLAND** of Cumberland, Representatives: **KILKELLY** of Wiscasset, **STROUT** of Corinth

Resolve, to Obtain Land for the Construction of a Juvenile Detention Center in Northern Maine (Emergency)
S.P. 301 L.D. 917

Presented by Senator **BALDACCI** of Penobscot
Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 24.

Which were referred to the Committee on **STATE & LOCAL GOVERNMENT** and **ORDERED PRINTED**.

Sent down for concurrence.

Bill "An Act to Amend the Laws Concerning Utility Taxes"
S.P. 302 L.D. 918

Presented by Senator **CLEVELAND** of Androscoggin
Cosponsored by Representative: **MORRISON** of Bangor

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

Sent down for concurrence.

COMMITTEE REPORTS

House

Ought to Pass As Amended

The Committee on **BUSINESS LEGISLATION** on Bill "An Act to Revise the Grandfathering Provisions for Acupuncturists"

H.P. 111 L.D. 153

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-40)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-40)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-40) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

The Committee on **UTILITIES** on Bill "An Act to Allow Emergency Interruption of Telephone Service for Law Enforcement Purposes"

H.P. 364 L.D. 467

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-42)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-42)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-42) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

Divided Report

The Majority of the Committee on **BUSINESS LEGISLATION** on Bill "An Act to Revise the Reciprocity Provisions for Licensing of Barbers and Cosmetologists"

H.P. 121 L.D. 162

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

CIANCHETTE of Somerset
BUSTIN of Kennebec
MARDEN of Kennebec

Representatives:

HOGLUND of Portland
VIGUE of Winslow
ST. ONGE of Greene
HILLOCK of Gorham
THOMPSON of Lincoln

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-34)**.

Signed:

Representatives:

REED of Dexter
CLEMENT of Clinton
CAMERON of Rumford

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Which Reports were **READ**.

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

Senator **ESTY** of Cumberland was granted unanimous consent to address the Senate off the Record.

On motion by Senator **ESTY** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Amend the Confidentiality Provisions of the Maine Juvenile Code" (Emergency) (Governor's Bill)

S.P. 251 L.D. 770

Joint Select Committee on **CORRECTIONS** suggested and **ORDERED PRINTED**.

In Senate, March 4, 1993, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED** without reference to a Committee.

Comes from the House under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-60)** without reference to a Committee, in **NON-CONCURRENCE**.

The Senate **RECEDED** and **CONCURRED**.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

Senate

Divided Report

The Majority of the Committee on **LEGAL AFFAIRS** on Resolve, to Allow Neal and Linda Chute to Bring an Action against the State

S.P. 17 L.D. 7

Reported that the same **Ought Not to Pass.**

Signed:

Senators:

HANDY of Androscoggin
HALL of Piscataquis

Representatives:

DAGGETT of Augusta
GAMACHE of Lewiston
STEVENS of Sabattus
NASH of Camden
ROBICHAUD of Caribou

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-44).**

Signed:

Senator:

CAREY of Kennebec

Representatives:

LEMKE of Westbrook
MICHAEL of Auburn
BOWERS of Washington
BENNETT of Norway
TRUE of Fryeburg

Which Reports were **READ.**

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day, pending **ACCEPTANCE** of Either Report.

Divided Report

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act to Prohibit Greyhound Racing in Maine" S.P. 46 L.D. 68

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-43).**

Signed:

Senators:

CAREY of Kennebec
HALL of Piscataquis
HANDY of Androscoggin

Representatives:

MICHAEL of Auburn
BOWERS of Washington
BENNETT of Norway
NASH of Camden
ROBICHAUD of Caribou
TRUE of Fryeburg
LEMKE of Westbrook

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass.**

Signed:

Representatives:

DAGGETT of Augusta
GAMACHE of Lewiston
STEVENS of Sabattus

Which Reports were **READ.**

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED.**

The Bill **READ ONCE.**

Committee Amendment "A" (S-43) **READ** and **ADOPTED.**

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING.**

Divided Report

The Majority of the Committee on **LEGAL AFFAIRS** on Bill "An Act Regarding the Purchase of Spirits at State Liquor Stores"

S.P. 91 L.D. 245

Reported that the same **Ought Not to Pass.**

Signed:

Senators:

CAREY of Kennebec
HALL of Piscataquis

Representatives:

DAGGETT of Augusta
MICHAEL of Auburn
BOWERS of Washington
STEVENS of Sabattus
BENNETT of Norway
NASH of Camden
ROBICHAUD of Caribou
TRUE of Fryeburg

The Minority of the same Committee on the same subject reported that the same **Ought to Pass.**

Signed:

Senator:

HANDY of Androscoggin

Representative:

GAMACHE of Lewiston

Which Reports were **READ**.

On motion by Senator **CAREY** of Kennebec, Bill and Accompanying Papers **RECOMMITTED** to the Committee on **LEGAL AFFAIRS**.

Sent down for concurrence.

Bill "An Act to Amend the Municipal Public Employees Labor Relations Laws" H.P. 165 L.D. 217 (H "A" H-38)

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House

Bill "An Act to Allow Game Wardens to Receive Remuneration for Serving in Elected Municipal or County Positions" H.P. 174 L.D. 226

Bill "An Act to Repeal the Statutory Provisions Formerly Governing Unfunded State Mandates" H.P. 303 L.D. 391

Resolve, Renaming Ames Cove of Friendship as Flood's Cove H.P. 368 L.D. 471

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**, in concurrence.

House As Amended

Bill "An Act to Amend the Public Works Contractors' Surety Bond Law of 1971" H.P. 51 L.D. 67 (C "A" H-35)

Bill "An Act to Utilize Local Enforcement Mechanisms for Land Use Violations" H.P. 73 L.D. 103 (H "A" H-39 to C "A" H-28)

Bill "An Act Relating to the Protection of Public Water Supplies" (Emergency) H.P. 91 L.D. 121 (C "A" H-37)

Bill "An Act to Amend the Archery Hunting Requirements" H.P. 93 L.D. 123 (C "A" H-36)

Bill "An Act to Permit Professional Review Committees to Work with Impaired Physician Assistants" H.P. 103 L.D. 145 (C "A" H-33)

Senate

Bill "An Act to Repeal the Release Review Advisory Committee" S.P. 144 L.D. 435

Which was **READ A SECOND TIME** and **PASSED TO BE ENGROSSED**.

Sent down for concurrence.

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

An Act to Authorize the New England School of Broadcasting to Award the Degree of Associate of Science S.P. 70 L.D. 132 (C "A" S-26)

Which was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

An Act to Expand the Membership of the National Conference of Commissioners on Uniform State Laws H.P. 74 L.D. 104 (C "A" H-26)

On motion by Senator **PEARSON** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**.

Emergency

An Act to Authorize Financing of Solid Waste Districts on a Per Capita or a State Valuation Basis H.P. 9 L.D. 16 (C "A" H-27)

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with No Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Emergency

An Act to Extend the Reporting Date of the Task Force on Mental Health Education and Licensure
H.P. 241 L.D. 320

This being an Emergency Measure and having received the affirmative vote of 32 Members of the Senate, with No Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

ORDERS OF THE DAY

Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Senate Rule 29.

The Chair laid before the Senate the Tabled and Specially Assigned (2/4/93) matter:

SENATE ORDER - regarding all Bills and Resolves carrying or requiring an appropriation of fishery and wildlife revenue or involving a loss of fishery and wildlife revenue that are in order to be passed to be enacted, or finally passed, shall, at the request of a member of the Committee on Fisheries and Wildlife be placed on a special calendar to be called up for consideration only by a member of that committee.

Tabled - February 2, 1993, by Senator **ESTY** of Cumberland.

PENDING - PASSAGE

(In Senate, December 2, 1992, **READ**.)

On motion by Senator **ESTY** of Cumberland
INDEFINITELY POSTPONED.

The Chair laid before the Senate the Tabled and Specially Assigned (3/9/93) matter:

HOUSE REPORTS - from the Committee on **BANKING AND INSURANCE** on Bill "An Act to Preserve the Public Advocate's Participation in Residual Market Deficit Proceedings at the Bureau of Insurance" (Emergency)
H.P. 50 L.D. 66

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-31)**

Minority - **Ought Not to Pass**

Tabled - March 4, 1993, by Senator **ESTY** of Cumberland.

Pending - **ACCEPTANCE** of Either Report

(In Senate, March 4, 1993, Reports **READ**.)

(In House, March 4, 1993, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-31)**.)

Senator **MCCORMICK** of Kennebec moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

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

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. L.D. 66 is different than last year's L.D. 66. Although it may be equally as memorable. This is a pro-employer bill, if you want to do something for employers in this State and save on their Workers' Compensation premiums then please support the bipartisan Committee amendment. Under the provisions of the law that were repealed and replaced in the 1992 Workers' Compensation Reform, the Public Advocate's Office used to receive \$75,000 from insurer's fees to intervene on behalf of employers in Workers' Compensation rate cases. That was \$50,000 for consultants, \$15,000 for the staff time for their lawyers and \$10,000 when there was a simultaneous fresh start surcharge hearing and a Workers' Compensation hearing. When we did our reform in October we basically eliminated any prospective Workers' Compensation hearings and what that basically means is we deregulated the Workers' Compensation market. There will be no more prospective rate hearings. That means there will only be retrospective rate hearings, in other words fresh start surcharge rate hearings. So we re-wrote the Public Advocate's section of the Workers' Compensation Bill, we took them out of prospective hearings and we left them a limited role in fresh start surcharge hearings. When we did that we basically made a mistake and I think that the Blue Ribbon Commission was aware in the end and it was brought to their attention that giving \$20,000 to the Public Advocate to intervene on behalf of employers in fresh start surcharge cases was inadequate. In the end, as you recall, we did not want to change anything more in the Blue Ribbon Commission Report and they basically said we'll deal with it later.

The Bill that you have before you, the bipartisan Committee amendment, gives to the Public Advocate \$65,000. \$50,000 of it for consultants, actuaries

and economists, \$15,000 for staff time so that they can intervene on behalf of employers in fresh start surcharge cases. This money is not from the General Fund, it comes from fees that insurers are required to file when they file a fresh start surcharge case. Maine's fresh start surcharge law changed Maine's Workers' Compensation Insurance Assigned Risk pool so that employers, rather than insurers, would bear a large part of the risk of insuring residual market policies. Under fresh start the insurance companies in the pool act as managers and servicing agents to process claims and collect premiums. The pool reimburses individual insurers for any losses paid on claims and the insurers managing the pool can seek reimbursement from employers if it runs out of funds to pay the insurance companies, that's a very important point. Beginning with policies written in 1988 the Superintendent of Insurance is authorized to conduct an annual fresh start proceeding to decide whether employers must pay a surcharge on premium to cover projected deficits in the pool or whether employers get a credit if a surplus exists. In that fresh start proceeding the National Council on Compensation Insurance, the NCCI, on behalf of the pool insurance companies presents a request for the additional pool funds the insurance companies claim they will need from the employers. On behalf of employers the Public Advocate is authorized to present evidence showing that additional funds are not necessary or that smaller surcharge amounts will be enough to cover expected costs. The Superintendent holds the hearing, ways the evidence on both sides and then comes to a decision about how much, if any, employers will be surcharged. Last year, in the 1992 rate case, the Public Advocate's involvement was very extensive and in fact, it saved employers \$40 million, and I refer you to the November 16 rate filing in which the Superintendent of Insurance assesses insurance companies \$40 million for "insurer inefficiency and inadequate investment practices" all of which were proved through the discovery methods of the Public Advocate. The issues in this particular Bill are should it be the public policy of the State of Maine to allow the Public Advocate adequate resources to intervene on behalf of employers in fresh start rate cases. Another issue is if we continue, and we had testimony in our Committee from Central Maine Power and other utilities, that should we continue to stick with this \$20,000 figure that I posed to you was mistakenly inserted in the Blue Ribbon Commission Report, should we continue at that under funded rate the public utilities of this State are worried that there will be a cost shifting to utility rate payers to pay for Public Advocate's Workers' Compensation intervention. Another thing to remember is we had extensive testimony on behalf of businesses that support this Bill, the Public Advocate's office works in concert with them, with the Chamber of Commerce and Industry, with the Maine Council of Self Insurers to work out actuarial testimony and the only people opposing this Bill in Committee were the insurers.

I want to pass out to you now a memo that was given to the Committee from the Public Advocate, it is a yearly report to the Governor's Office, the Public Advocate is under the Governor's Office as you may know. It tells you and itemizes their expenses for 1990, 1991 and 1992 fresh start surcharge cases and their prospective Workers' Compensation premium cases. When you get this document you will see two columns, one labeled "fresh start" and one labeled "prospective premium", that means, for instance, in 1992 the Public Advocate spent \$45,451 on consultants and economists to intervene in the fresh start surcharge case and it spent \$21,000 in 1992 to

intervene in the prospective, the last rate case. On the second page I have just included in the 1992 year, and I can give you the other pages if you like but to save paper I focused on 1992, the itemization of what the consultants cost the Public Advocate for 1992. I have circled the fresh start costs. They differentiated between prospective rate case consultant costs and fresh start surcharge costs and the total is \$45,000. I submit to you that the Public Advocate cannot mount a good case on behalf of Maine's employers with an allocation of \$20,000 for consultants if in 1992 it cost them \$45,000 for consultants. In 1991 it cost them \$33,000 for consultants. Never, actually, in the last three years have they ever been able to purchase consultants for \$20,000 as you can see. I urge you to support the bipartisan Committee Amendment "A". Thank you.

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

Senator **CAREY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I ran with the idea that I would not touch Workers' Compensation and the work that was done by the last Session for at least a year, and I hope to be able to continue that thought, but this is certainly a Bill that we have heard from employers on. I'd like to read you a couple of things that we have heard from employers. Guilford of Maine, "It has become clear to us through our experience that the Public Advocate plays an important and positive role in representing the public interest in this key forum. In the technical area of surcharge determination we feel that it is critical to the vitality of the process that the Public Advocate be provided with sufficient resources to present creditable alternatives to the positions taken by the insurance industry which is well financed and seasoned in these matters." Maine Yankee, "At the public hearing CMP's representative stated their concern that if L.D. 66 doesn't pass the Public Advocate's Workers' Compensation costs will be shifted to utility rate payers." They went on to say, "We believe that the participation of the Public Advocate in Workers' Compensation proceedings has high value for Maine consumers." Bath Iron Works sent us a letter and they said as part of the closing, "therefore I encourage you to move L.D. 66 to the full Legislature with a strong and unanimous recommendation to pass. The funding provided in this Bill would allow the kind of independent oversight that will allow continued, positive change in Workers' Compensation in Maine." When Senator McCormick tells you that this is in fact a Bill to help the employers it is a Bill that would help the employers. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I voted in opposition to this Bill during the Committee hearing and I will oppose it here today. My opposition is based on a two pronged reasoning and I will try to keep them separate. First of all this Bill puts back in the funding what was taken out by the Blue Ribbon Commission under the new Workers' Compensation Act for the participation of the Public Advocate's Office in only the fresh start surcharge. They are not eliminated by this Bill, the Blue Ribbon Commission provided an amount of \$20,000 under the new Workers' Compensation Bill, that remains in there. This is merely an attempt to replace the old funding under the new law. Now in order to analyze this I believe

that you should consider what the function of the Public Advocate is under the old law as opposed to the new law. Under the old law the Public Advocate participated in not only the rate making process but the fresh start surcharge process. The old law was based on prior approvals as far as rates of insurance companies are concerned. That meant that the company had to file the rates or NCCI filed the rates in a long and lengthy and involved process was involved in determining these rates sometimes extended for months, as many of you well know. The new law is changed, now it is a file and use law that means that the rates can be filed in the morning, they can be used in the afternoon and that entire rate making hearing procedure has been eliminated. The only thing now we're dealing with as far as the Public Advocate is concerned is the establishment of this fresh start surcharge. Now in the last fresh start surcharge, if you think that the insurance department is doing this alone, there are many people involved, any organizations. For example there's the Maine Council of Self Insurers, there's the Maine Forest Products Council, there's the Maine State Chamber of Commerce and Industry, the AFL-CIO, there are many that participate in this fresh start surcharge process. So it is not a matter of our Insurance Department just sitting over there and doing this on their own. There is ample representation from industry, in my opinion, across the entire spectrum of this process. This has freed up this rate making process much time, I'm sure, in our Insurance Department who is adequately staffed with rating analysts of all different types. They no longer have to go through this lengthy rate making hearing process and I believe that we have adequate staff over there to determine whether this fresh start surcharge should be 5%, 5 1/4%, or 5 1/2%. If they aren't capable of doing that then our argument should be with them and I think we ought to have a talk with them. Secondly, right now there are fourteen Bills dealing with changes in the new Workers' Compensation Law. Not quite half of the bills have been printed. At this rate we're probably going to have somewhere between thirty or forty or more Bills revising and changing the new Workers' Compensation Law that hasn't even been in force yet for 75 days. Now are we going to put this back to where we were before by nibbling around the edges, we know the old system didn't work, I think this new law is entitled to a fair chance to see if it can be made successful. It's not perfect, it's not going to be without changes as time goes on but I think we ought to give it a year or two, analyze where the real problems are within it and then correct them at that time. Mr. President I'd like to ask for a Division. Thank you.

Senator **KIEFFER** of Aroostook requested a Division.

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

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. The Blue Ribbon Commission focused, because I talked to one of them in preparation for this discussion on the Committee, focused only on what's going to happen. They created MEMIC and they created a new Board, they did not focus at all on the residual market, on the past. You can imagine if you want, a wall built between what is old and what is new. They never intended for us to forever keep the Blue Ribbon Commission Report inviolable, and to prove that we have statements, we had statements before our Committee by the Public Advocate's Office and others that when it was brought to their attention that what they had written down in

their report, the \$20,000 figure for consultants for the Public Advocate, was one too low and two did not contain any staff time for the Public Advocate's Office to intervene. They said we cannot fix that now, you'll have to deal with that later, and here we are today, true to form, dealing with it later. I submit to you that it is patently obvious that included in the Blue Ribbon Commission Law that we passed in October, \$20,000 only for consultants and not anything for the staff time, the two very able lawyers that are at every single hearing down at the Superintendent of Insurance Office arguing on behalf of Maine employers that that in itself shows you that a mistake was made and needs to be corrected. That is why there is \$50,000 included in this Committee Amendment for staff time. Secondly I've given you evidence that the Public Advocate simply cannot purchase consultants to do a fresh start rate hearing for \$20,000. Just to be careful, we put in the Committee Amendment two things that garnered the bipartisan support. The first was a clause that will require that the Public Advocate return to insurers any unused portions of either their staff time assessment or the consultant assessment. Secondly there is a sunset, after two years we are going to revisit this and find out if the Public Advocate is utilizing those monies effectively. In answer to the question from my good colleague from Aroostook County, Senator Kieffer, yes others do intervene in these proceedings but only sometimes does the chamber have an actuary and sometimes it doesn't. Sometimes the self insurers have an actuary and sometimes they don't. They all depend on the Public Advocate and this assessment of insurers for the intervention and the main advocates in these rate cases.

I feel I must tell you a story that is so important to this whole issue. It goes to the question of how important these fresh start surcharge hearings are going to be. Senator Kieffer from Aroostook is absolutely right, there is going to be no more prospective hearings, they are done with that. Now the argument is going to shift to how big is the deficit in the residual market. Last year, in their 1992 surcharge hearing the insurers said it was \$331 million. This year in the papers they just filed the other day, they are saying it is \$613 million. It has almost doubled in one year and if you think that it is not important to have the power of the Public Advocate's Office fully in force advocating that that fresh start residual deficit is lower I submit to you that it is ultimately important that is where the argument has shifted. It has shifted to the residual market. To that end the newest thing that has happened in the last year, I am sure you have read about it in publications, is the actions of the Public Advocate to call into question the lost cost data and management practices of the insurers. In fact, let me just read to you what they did. "The Public Advocate in August hired an accounting expert to review pool data recording and auditing systems. Later in August the Public Advocate conducted discovery of insurance company internal audits, NCCI audits, and did depositions of staff from one industry company to determine the extent of problems of claims handling and financial record keeping. Still in August the Public Advocate went to Superior Court to oppose the NCCI challenge." The NCCI said, basically, no, you cannot see our backup data, our lost cost filings, you cannot see them. The Superintendent of Insurance said yes they ought to be able to see them, NCCI went to court saying no we don't want to show them to you and the Public Advocate pushed all the way to the Supreme Court of Maine to be able to see the data upon which NCCI based this huge fresh start

surcharge. The Public Advocate won in the Maine Law Court and in fact was allowed twenty four hours to go to Boca Raton, Florida, where all this data from the National Council of Compensation Insurers is kept, and under armed guard, for twenty four hours was allowed to review the lost cost sheets, which is the sheets upon which NCCI based its rate filing. Because of that effort on their part, they were able to prove in the rate case that there was mismanagement of claims handling and servicing and that saved Maine's employers \$40 million. Now I submit to you this Bill is absolutely essential, there is a raging argument going now as to what the size of the residual market pool deficit is. It is in the interest of employers to have that deficit be smaller because they bear half the cost of it. It is in the interest of insurers to have that deficit be larger because their surcharges are based on that and that is the question. It's essential that an employer have adequate representation and advocacy and I urge you to support Committee Amendment "A". Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **MCCORMICK** of Kennebec, to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

A Division has been requested.

Will all those in favor please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

16 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **MCCORMICK** of Kennebec, to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A"(H-31) **READ** and **ADOPTED**, in concurrence.

The Bill as **Amended**, **TOMORROW ASSIGNED FOR SECOND READING**.

On motion by Senator **ESTY** of Cumberland, Tabled 1 Legislative Day pending **ENACTMENT**.

Off Record Remarks

Senator **SUMMERS** of Cumberland was granted unanimous consent to address the Senate off the Record.

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

Senator **ESTY** of Cumberland was granted unanimous consent to address the Senate off the Record.

On motion by Senator **FOSTER** of Hancock, **ADJOURNED** until Tuesday, March 16, 1993, at 10:00 in the morning.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Emergency

An Act to Amend the Confidentiality Provisions of the Maine Juvenile Code (Governor's Bill)
S.P. 251 L.D. 770
(H "A" H-60)