

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME IV

FIRST REGULAR SESSION

Senate

May 2, 1995 to June 16, 1995

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

In Senate Chamber
Tuesday
June 6, 1995

Senate called to Order by the President, Jeffrey H. Butland of Cumberland.

Prayer by the Reverend M. Lester Strout of the First Parish Congregational Church in Pownal.

REVEREND M. LESTER STROUT: The way you come into the Chamber reminds me a lot of my congregation coming to worship on Sunday mornings. I wonder which group it comes from, whether it's from the church congregation or if our church congregation gets their being tardy from the Senate. It's good to be with you. Let's pray together.

We thank you and praise you, our Heavenly Father, for your great goodness to us. We thank you for this beautiful day which you have laid before us. We would ask that you would be with this Senate Chamber, and these Senators, as they do their business today. Scripture reminds us that if we lack wisdom we are to ask of you, Oh God, so we pray for wisdom from yourself, in the decisions which need to be made. Grant, Oh God, that you would just be with each member of the Senate, and may they know your mind. We pray for the deliberations that take place this day, that it may resound to your honor and to your glory, and to the betterment of mankind and to our state. We ask this in you wonderful name, and in whose name we pray. Amen.

Reading of the Journal of Yesterday.

Off Record Remarks

COMMITTEE REPORTS

House

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Forbid an Employer from Hiring Replacement Workers during a Strike"

H.P. 236 L.D. 316

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

Signed:

Senators:

BEGLEY of Lincoln
MILLS of Somerset

Representatives:

JOY of Crystal
JOYCE of Biddeford
PENDLETON, JR. of Scarborough
STEDMAN of Hartland
WINSOR of Norway

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-310).**

Signed:

Senator:

RAND of Cumberland

Representatives:

HATCH of Skowhegan
CHASE of China
LEMAIRE of Lewiston
SAMSON of Jay
TUTTLE, JR. of Sanford

Comes from the House with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-310).**

Which Reports were **READ.**

On motion by Senator **KIEFFER** of Aroostook, Tabled until Later in Today's Session, pending **ACCEPTANCE** of Either Report.

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Prohibit the Employment of Professional Strikebreakers"

H.P. 505 L.D. 686

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-312).**

Signed:

Senators:

MILLS of Somerset
RAND of Cumberland

Representatives:

HATCH of Skowhegan
CHASE of China
LEMAIRE of Lewiston
SAMSON of Jay
TUTTLE, JR. of Sanford

Senator **BEGLEY** for the Committee on **LABOR** on Bill "An Act to Provide Limited Immunity to Former Employers Who Provide References"

S.P. 264 L.D. 704

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-218)**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-218) **READ** and **ADOPTED**.

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

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

Signed:

Senator:

BEGLEY of Lincoln

Representatives:

JOY of Crystal
JOYCE of Biddeford
PENDLETON, JR. of Scarborough
STEDMAN of Hartland
WINSOR of Norway

Comes from the House 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" (H-312)**.

Which Reports were **READ**.

On motion by Senator **KIEFFER** of Aroostook, Tabled until Later in Today's Session, pending **ACCEPTANCE** of Either Report.

Senate

Ought to Pass As Amended

Senator **ABROMSON** for the Committee on **BANKING AND INSURANCE** on Bill "An Act to Wind Up the Affairs of the Maine Medical and Hospital Malpractice Joint Underwriting Association"

S.P. 436 L.D. 1204

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-215)**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-215) **READ** and **ADOPTED**.

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

Divided Report

The Majority of the Committee on **BANKING AND INSURANCE** on Bill "An Act to Authorize Participation by the Public Advocate in a Regulatory Proceeding Concerning the Residual Market Mechanism for Workers' Compensation"

S.P. 532 L.D. 1470

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-217)**.

Signed:

Senators:

ABROMSON of Cumberland
SMALL of Sagadahoc
MCCORMICK of Kennebec

Representatives:

CHASE of China
GATES of Rockport
VIGUE of Winslow
PAUL of Sanford
SAXL of Portland

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

Signed:

Representatives:

GUERRETTE of Pittston
CAMPBELL of Holden
JONES, JR. of Pittsfield
LUMBRA of Bangor
MAYO, III of Bath

Which Reports were **READ**.

On motion by Senator KIEFFER of Aroostook, Tabled until Later in Today's Session, pending ACCEPTANCE of Either Report.

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Change the Membership of the Task Force on the Maine School of Visual and Performing Arts"

S.P. 225 L.D. 585

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

Signed:

Senators:

SMALL of Sagadahoc
ESTY, JR. of Cumberland
ABROMSON of Cumberland

Representatives:

MARTIN of Eagle Lake
AULT of Wayne
BARTH, JR. of Bethel
CLOUTIER of South Portland
MCELROY of Unity
BRENNAN of Portland
LIBBY of Buxton

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-214).**

Signed:

Representatives:

DESMOND of Mapleton
STEVENS of Orono
WINN of Glenburn

Which Reports were **READ.**

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED.**

Sent down for concurrence.

Divided Report

The Majority of the Committee on **TAXATION** on Bill "An Act to Create a Revolving Fund to Finance the Maine Quality Centers"

S.P. 543 L.D. 1491

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

Signed:

Senators:

HATHAWAY of York
FERGUSON of Oxford

Representatives:

TRIPP of Topsham
TUTTLE, JR. of Sanford
KEANE of Old Town
RICHARDSON of Portland
MURPHY of Berwick
DORE of Auburn
SPEAR of Nobleboro
DUNN of Gray
REED of Falmouth

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-216).**

Signed:

Senators:

CAREY of Kennebec

Representatives:

GREEN of Monmouth

Which Reports were **READ.**

On motion by Senator KIEFFER of Aroostook, Tabled until Later in Today's Session, pending ACCEPTANCE of Either Report.

SECOND READERS

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

House

Bill "An Act to Make Certain Changes to Postconviction Review"

H.P. 955 L.D. 1344

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

House As Amended

Bill "An Act to Extend to Businesses the Laws Concerning Protection from Harassment"

H.P. 275 L.D. 377
(C "A" H-328)

Bill "An Act to Allow the Sale of Irradiated Food in the State"

H.P. 437 L.D. 603
(C "A" H-128)

Bill "An Act to Provide a Tax Credit for the Rehabilitation of Historic Properties"

H.P. 715 L.D. 972
(C "A" H-322)

Bill "An Act to Exempt Goods Sold by Scouting Organizations from the Sales Tax"

H.P. 776 L.D. 1073
(C "A" H-338)

Bill "An Act to Exempt Bows from the Firearms Discharge Ordinances"

H.P. 785 L.D. 1102
(C "A" H-335)

Bill "An Act Regarding the Granting of Hotel Liquor Licenses to Establishments Located on Offshore Islands" (Emergency)

H.P. 830 L.D. 1161
(C "A" H-330)

Bill "An Act to Amend the Probate Code Regarding Conservatorship Funds and to Require Bonds for Out-of-state Conservators"

H.P. 911 L.D. 1287
(C "A" H-327)

Resolve, Authorizing the State Tax Assessor to Convey the Interest of the State in Certain Real Estate in the Unorganized Territory

H.P. 934 L.D. 1315
(C "A" H-337)

Bill "An Act to Make Minor Adjustments to the 1993 Apportionment Plan"

H.P. 977 L.D. 1386
(C "A" H-340)

Bill "An Act Pertaining to the Purchase Deposit on Automobiles"

H.P. 1014 L.D. 1429
(C "A" H-326)

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

Senate

Resolve, to Provide Clear Title for the Maine Judicial Center (Emergency)

S.P. 507 L.D. 1366

Bill "An Act to Amend the Maine State Retirement System with Respect to the Consolidated Plan for Participating Local Districts" (Emergency)

S.P. 559 L.D. 1518

Bill "An Act to Clarify the Municipal Bounds of the Town of Eliot" (Emergency)

S.P. 566 L.D. 1536

Which were READ A SECOND TIME and PASSED TO BE ENGROSSED.

Sent down for concurrence.

Senate As Amended

Bill "An Act Concerning the Labeling of Refundable Beverage Containers"

S.P. 21 L.D. 52
(C "A" S-210)

Bill "An Act to Increase the Amount of Reimbursement to Animal Shelters Housing Stray Dogs"

S.P. 387 L.D. 1064
(C "A" S-209)

Bill "An Act to Encourage the Training and Hiring of Resident Workers"

S.P. 432 L.D. 1200
(C "A" S-213)

Bill "An Act to Delegate Permit-granting Authority to Municipalities"

S.P. 467 L.D. 1263
(C "A" S-206)

Bill "An Act to Amend the Laws Relating to Administrator Certification"

S.P. 493 L.D. 1352
(C "A" S-207)

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

Sent down for concurrence.

Off Record Remarks

Senator LAWRENCE of York was granted unanimous consent to address the Senate off the Record.

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

Under suspension of the Rules, all matters thus acted upon were ordered sent forthwith.

On motion by Senator LAWRENCE of York, RECESSED until the 11 o'clock in the morning.

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

PAPER FROM THE HOUSE

Non-concurrent Matter

Bill "An Act to Authorize Municipalities to Pay Employees Biweekly" S.P. 259 L.D. 695

In Senate, May 25, 1995, PASSED TO BE ENGROSSED.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-343), in NON-CONCURRENCE.

Senator KIEFFER of Aroostook moved that the Senate INSIST.

Senator LAWRENCE of York moved that the Senate RECEDE and CONCUR.

Senator KIEFFER of Aroostook requested a Division.

On motion by Senator LAWRENCE of York, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator BUSTIN: Thank you Mr. President. I'm quickly trying to find the number of that amendment. Would you mind giving me that number?

THE PRESIDENT: That is H-343.

Senator BUSTIN: Thank you. I have read it. Basically, as I remember that amendment, and if you look at it yourselves, you will see that what that amendment does is allow those collective bargaining agreements that already have weekly pay in their contracts, to be able to collectively bargain that. Over and over again, I hear, depending on what our mood is, that we should not be violating collective bargaining agreements. All the amendment does that is before you right now, on this bill, is to allow that collective bargaining. I would hope that you would vote to allow the collective bargaining

procedure to be in full force and effect, rather than piece, by piece, by piece, taking it away. That's exactly what you are doing if you don't vote with this amendment. Thank you.

The President noted the absence of Senator BERUBE of Androscoggin, and excused her from the following Roll Call vote.

THE PRESIDENT: The pending question before the Senate is the motion of Senator LAWRENCE of York that the Senate RECEDE and CONCUR.

A vote of Yes will be in favor of RECEDING and CONCURRING.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: BUSTIN, CAREY, CIANCHETTE, ESTY, FAIRCLOTH, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, O'DEA, PARADIS, PINGREE, RAND, RUHLIN

NAYS: Senators: ABROMSON, AMERO, BEGLEY, BENOIT, CARPENTER, CASSIDY, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, KIEFFER, LORD, MILLS, PENDEXTER, SMALL, STEVENS, and the PRESIDENT, Senator BUTLAND

ABSENT: Senator: CLEVELAND

EXCUSED: Senator: BERUBE

Senator LORD of York requested and received Leave of the Senate to change his vote from YEA to NAY.

14 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 1 Senator being absent and 1 Senator having been excused, the motion of Senator LAWRENCE of York to RECEDE and CONCUR, FAILED.

On motion by Senator KIEFFER of Aroostook, the Senate INSISTED.

Sent down for concurrence.

COMMITTEE REPORT

Senate

Ought to Pass As Amended

Senator **BENOIT** for the Committee on **CRIMINAL JUSTICE** on Bill "An Act to Establish the DNA Data Base and Data Bank Act"

S.P. 480 L.D. 1304

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-219)**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-219) **READ** and **ADOPTED**.

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

ENACTOR

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

An Act to Amend the Loring Development Authority Law

S.P. 304 L.D. 843
(C "A" S-159)

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

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

PAPER FROM THE HOUSE

House Papers

Bill "An Act to Address a Shortfall in the Maine Ground Water Oil Clean-up Fund and Change the Financial Assistance Program for Owners of Underground Oil Storage Facilities" (Emergency)

H.P. 1119 L.D. 1563

Reference to the Committee on **NATURAL RESOURCES** suggested and **ORDERED PRINTED**.

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

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hathaway.

Senator **HATHAWAY:** Thank you Mr. President. I would like to pose a question through the Chair. I'm a little confused, I guess. I'm not sure, exactly, how this differs from L.D. 1543, which I thought was under consideration at this time by the Natural Resources Committee.

THE PRESIDENT: The Senator from York, Senator Hathaway, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Lord.

Senator **LORD:** Thank you Mr. President, my Learned Colleagues. L.D. 1543 was a bill that originated here in the Senate. Senator Ruhlin was the prime sponsor. In view of the fact that this is a money matter, the money matter bills have to generate in the House.

Senate at Ease

Senate called to order by the President.

On motion by Senator **KIEFFER** of Aroostook, Tabled until Later in Today's Session, pending **REFERENCE**.

The President requested the Sergeant-at-Arms to escort the Senator from Aroostook, Senator **KIEFFER** to the Rostrum where he assumed the duties as President Pro Tem.

The President took a seat on the Floor of the Senate.

The Senate called to Order by the President Pro Tem.

Senate at Ease

Senate called to order by the President Pro Tem.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on LABOR on Bill "An Act to Forbid an Employer from Hiring Replacement Workers during a Strike"

H.P. 236 L.D. 316

Majority - Ought Not to Pass (7 members)

Minority - Ought to Pass as Amended by Committee Amendment "A" (H-310) (6 members)

Tabled - earlier in the day by Senator KIEFFER of Aroostook

Pending - ACCEPTANCE of Either Report

(In House, June 5, 1995, the Minority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-310).)

(In Senate, earlier in the day, Reports READ.)

Senator BEGLEY of Lincoln moved that the Senate ACCEPT the Majority OUGHT NOT TO PASS Report in NON-CONCURRENCE.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Rand.

Senator RAND: Thank you Mr. President, Men and Women of the Senate. I would ask you, please, to not support the pending motion. This is an exceedingly important piece of legislation that we could enact that would be extremely beneficial to the hard-working people in the State of Maine. We have two amendments that are ready to be offered. Of course, they cannot be offered unless we defeat this motion and move on so that we can pass the bill. At this time I think I am forbidden to speak, because of parliamentary procedure, about the amendments, so I would ask you to please vote down the pending motion so that we can go on to discuss two very good amendments. I think either one would be an excellent move in the right direction for the workers of the State of Maine. Please, defeat the pending motion. Thank you.

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

Senator BEGLEY: Thank you Mr. President. This bill, and another that will come shortly hereafter, are intrusions, once again, into the bargaining and negotiation rights of management and labor. It should be handled there, as in most cases. That is the benefit of both sides. The intention, if we follow that closely, would outweigh one side versus the other, by legislation. That is not what negotiations should be all about. Even a compelling statement on this bill, according to the Attorney General of this state, it is his opinion that the proposals in question will be found unconstitutional by the Federal Regulations Labor Relations Act. It has been found that way in several instances in the past, and will continue to be so. So, in this respect, the bill should be defeated on that point of unconstitutionality if nothing else. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Lawrence.

Senator LAWRENCE: Thank you Mr. President, Men and Women of the Senate. The time has come to level the playing field for workers in the State of Maine. This bill does exactly that. I was a little surprised to hear a prior speaker talk about this bill being so intrusive on the collective bargaining agreement, when the argument was raised on a previous bill to see the vote go the other way, when the argument was made that that bill was intrusive on the collective bargaining agreement. Too often we have tried to tilt the advantage one way or the other. This bill seeks to do something that we need to do for the workers of the State of Maine, and that is put them on a level playing field so that they can bargain equally. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Rand.

Senator RAND: Thank you Mr. President, Men and Women of the Senate. The workers in America are really facing a crisis today, and certainly, the workers in Maine. In increasing numbers, our workers are being fired when they exercise their legal right to withhold their labors when all else has failed in negotiating with their employers. It's been ten years since the air traffic controllers, actually it's been more than ten years, it was in 1981 when the PATCO workers were permanently replaced. One of the previous speakers has mentioned the level playing field, in fact both, I think, have mentioned the level playing field for American workers. America is one of only two countries in the world that allows the permanent replacement of striking employees, only one of two in the entire world that will allow this. When we talk about a level playing field, we are talking in this instance that when the employees strike, they actually have exercised their right to resign. When we are talking about this legislation, I think it is good to remember that we are also talking about a situation where strike is not in progress, but a lock-out can occur. In that situation an employer can, literally, lock their doors against the employees who are attempting to go to work. Then, they hire replacement workers to take the jobs of those employees who they have locked out. If this is a level playing field, I would hate to know what an unlevel playing field is. We have a history in Maine, recent history, of where strikes

and replacement workers have caused untold hardship and terrible tragedies in Maine towns.

The legislation that we are proposing would do a lot to level the playing field and eliminate these horrible situations that occur when a strike is in place and when workers are permanently replaced on their jobs. If we believe that workers have a right to organize, if we believe in the very basics of unionization for our workers in this country, then we have to believe that when, as a last resort, workers have only this one tool, which is to retain their labors, then we must offer them the protection of having that job once the strike has been settled, once it has ended. To permanently replace a worker is to tell them that when they exercise their right to strike they have exercised their right to resign from their job. This is not the way things were meant to be. This is the way they have been interpreted. I think another thing that should be pointed out, as I have mentioned, this is a nationwide problem. Unionized workers have their hands tied when it comes to negotiating their contracts. The President of the United States, in March of this year, issued an executive order that bans the federal government from dealing with companies who have permanently replaced their workers. I would hope that you would defeat the motion on the floor, so that we can go on to pass this L.D. and amend it to take care of the constitutional problems. Thank you.

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

Senator **BEGLEY:** Thank you Mr. President. Negotiations across the country, as well as in Maine, have worked to the betterment of both sides. When one talks of a level playing field, that probably is not going to help either side in regards to negotiations of one way or the other. Right now labor says management has the upper hand, therefore it is uneven. If this bill were to pass it would make it just as uneven, if not more so, on the other side, because once on strike, without any other possibility, they could stay on strike and be guaranteed that the strike would last in that fashion. This is one of the reasons why I think the federal government has stayed out of negotiations and allowed it to work to the betterment of both, and it has done that, with rare exceptions. There is another reason that was pointed out, that the bill, as proposed by the Attorney General, and the National Labor Relations Board, would be unconstitutional. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BOENOIT:** Thank you Mr. President. Let me first apologize to the members of the Senate. During the debate I stepped out to meet with some young people from Wilton, in my district, and I missed some of the debate. I would like to pose a question through the Chair. Given the letter of the Attorney General's office, May 8 of this year, would somebody, and I say this respectfully, tell me why I should vote for a bill on it's face that the Attorney General says is unconstitutional? Thank you.

THE PRESIDENT PRO TEM: The Senator from Franklin, Senator Benoit, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President, Men and Women of the Senate. The motion on the floor is Ought Not to Pass. If that motion carries there can be no correction made to the bill to deal with the unconstitutionality. My understanding is there are people who have amendments who want to correct it. So, if you want to see those amendments, you have to vote against the motion of Ought Not to Pass. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BOENOIT:** Thank you Mr. President. I appreciate the response to my question, but I think, to me, it's putting the cart before the horse. First, I would like to see what makes this proposed law, that the Attorney General says is unconstitutional, what is it that's going to make it valid. I would like to see that first, before I vote on the matter. That's why it appears to me that I will be supporting the pending motion.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President, Men and Women of the Senate. Unfortunately, for the good Senator from Franklin, it's impossible to debate an amendment before it is before the body. In order to debate an amendment, we would have to first defeat this pending motion so we could then discuss it. So, I would ask the good Senator's support in defeating this motion, so we can go on to address his issues.

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

Senator **BEGLEY:** Thank you Mr. President. The continued advice of the Attorney General was that the amendments, as possibly proposed, and I haven't seen them all, but they have been discussed in the Committee, his opinion is as it continues in the letter, the amendments would very likely be pre-empted by the National Labor Relations Act.

On motion by Senator **AMERO** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President. I would like to pose a question through the Chair. With regards to what the Senator from Lincoln just said about how the amendment would, according to the Attorney General, more than likely violate the pre-emption clause, I would appreciate some explanation, rather than having to go on faith. Thank you.

THE PRESIDENT PRO TEM: The Senator from Waldo, Senator Longley, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE**: Thank you Mr. President, Men and Women of the Senate. Unfortunately, we cannot give that explanation. The good Senator from Lincoln was, perhaps, in advance of himself by discussing an amendment before it has been offered, because you cannot discuss an amendment before it has been offered. So, while there may be a response to what he said, we cannot discuss it until that amendment is offered. So, if you want to be able to discuss it, if you want to be able to debate it, we have got to defeat this motion of Ought Not to Pass. Thank you.

The President Pro Tem noted the absence of Senator **BERUBE** of Androscoggin, and excused her from the following Roll Call vote.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by Senator **BEGLEY** of Lincoln that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **ABROMSON, AMERO, BEGLEY, BENOIT, BUTLAND, CARPENTER, CASSIDY, CIANCHETTE, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, LORD, MILLS, PENDEXTER, SMALL, STEVENS, and the PRESIDENT PRO TEM, Senator KIEFFER**

NAYS: Senators: **BUSTIN, CAREY, ESTY, FAIRCLOTH, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, O'DEA, PARADIS, PINGREE, RAND, RUHLIN**

ABSENT: Senator: **CLEVELAND**

EXCUSED: Senator: **BERUBE**

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being absent and 1 Senator having been excused, the motion by Senator **BEGLEY** of Lincoln to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE, PREVAILED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on LABOR on Bill "An Act to Prohibit the Employment of Professional Strikebreakers" H.P. 505 L.D. 686

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-312) (7 members)

Minority - Ought Not to Pass (6 members)

Tabled - earlier in the day by Senator **KIEFFER** of Aroostook

Pending - **ACCEPTANCE** of Either Report

(In House, June 5, 1995, 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-312).**)

(In Senate, earlier in the day, Reports **READ**.)

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

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

Senator **BEGLEY**: Thank you Mr. President. For all of the same reasons of the previous bill, this bill should not pass. So, I will simply say to you that the same decision has been reached by the Attorney General, therefore, I hope that you will not support the pending motion so that we may move the Ought Not to Pass. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator **Mills**.

Senator **MILLS**: Thank you Mr. President, Men and Women of the Senate. There is a distinction between this bill and the one we just voted on. This bill would prohibit only professional strikebreaking activity by, essentially, out-of-state firms who specialize in these practices, and who have a habit of coming into a state that is victimized by a labor dispute, and essentially, I think, raising the tensions and presenting a threat to local security and local peace. It is on the basis of that distinction, that laws of this kind have been found to be appropriate under state law. In other words, not entirely pre-empted by federal law. We have an existing law that prohibits professional strikebreaking. It is too broad. It is pre-empted

by federal law. The one that is proposed, this bill, comes forward and says narrow the impact, narrow the scope of our existing law, and make it apply only to these very large out-of-state companies that engage in professional strikebreaking as a business. I think, on that basis, this bill has merit. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President. Once again, this is a bill that levels the playing field for American workers, and Maine workers. Some people look back and say the best time in our economy was from the 1930's to the 1960's, and that since that time, on an international comparison, we have been on the decline, the American economy has been on the decline. It's no coincidence that during that time, between 1930 and 1960, was the rise of the American labor movement. It was when labor unions were best able to get the return to the workers, who were their labor. That created a consumer economy in our country. Since that time, since we have chipped away at the advances of the labor movement in this country, we have seen a decline in our economy on the international comparison between other economies. Time and time again we have seen the chipping away of the successes of the American workers. We have seen legislation, time and time again, like this legislation, that seeks to have a concentration of wealth in the hands of a few. It's time to stop over regulating the workers. It's time to give people the fruits of their labor. Let's level the playing field. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May I please the Senate. Perhaps now if I pose a question through the Chair, it would have some standing. The good Senator Mills has indicated that there is a law on the books, but it is too broad, and that this bill here, if enacted, would narrow it. It seems to me that the merits of the bill are mooted by the Attorney General's opinion. I would like to pose a question through the Chair. Why should I vote for a piece of legislation that, upon its face, is unconstitutional according to the Attorney General of the State?

THE PRESIDENT PRO TEM: The Senator from Franklin, Senator Benoit, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Thank you Mr. President, Men and Women of the Senate. The Attorney General's letter of opinion draws a distinction between this bill and the bill that we just considered, and said that there is support in other federal cases, and there are very few of them all together, but there is a line of authority that says that legislation of this kind, that is narrowly focused on the large professional, strikebreaking companies that represent a potential source of violence to a labor dispute, that bills of this kind may well be constitutional. The Attorney General's opinion was in doubt as to whether it would be so adjudicated by the Maine Law Court. His

opinion was a rather flat one, in regard to the prior bill. His opinion on this bill expressed doubt. I think, given the interest that the State of Maine has in preserving our local peace and reducing violence in emotional labor disputes, it would prevail and we would be allowed to enforce this law because it is so narrowly drafted and so carefully constrained to serve the state's own interest.

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

Senator **BEGLEY:** Thank you Mr. President. May I simply quote from the letter of the Attorney General. "I am writing in response to your letter inquiring about Legislative Document 686 and the Legislative Document 316. Would, if enacted into law, be unconstitutional under the primacy clause of the United States Constitution. With the reasons which follow, it is the opinion of the Department that it is very likely that both of the proposals in question would be found to be unconstitutional." Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Ruhlin.

Senator **RUHLIN:** Thank you Mr. President, Honorable Senators of the State of Maine. First, I would like to say one thing. I didn't come here today to act as a member of the Supreme Court, I came here today to act as a Senator of the people of the State of Maine, to try to enact policies that will bring social peace to our society. That is the issue before us. The issue before us is professional strikebreakers. Those people who, for a living, do their best to spread discord throughout our society, those people who have come into our State and disrupted our community and our workplace. Those organizations who would encourage the use of those individuals. This is not new law. This is law that is presently on the books in the State of Maine. What you have before you today is an attempt to amend that law, to decriminalize that law, if you will, to allow it to be handled in the civil courts, and attempt to focus that law so that it comes into a more narrow scope, these unethical activities of the professional strikebreaker, and those who would use them. I say to you today that when you listen to this issue, look at the issue itself, not the smokescreen of constitutionality. We are here to make what is, in fact, the just social policies of this state, and to make them into law. I ask you to take that into consideration. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May I please the Senate. I agree with the good Senator, Senator Ruhlin, that we are not the Supreme Court. We are not here for that purpose. But, that begs the question, here we are, talking about the merits of something that on its face, according to the Attorney General, is unconstitutional. Instead of talking about the merits of the bill, we should be talking about a way in which it can be cleaned up. Constitutionality is never a smokescreen. I just can't get by that issue. The Attorney General, the chief law enforcement of the State of Maine, has

ruled that this bill, on its face, is bad. How in the world can we vote for a piece of legislation so postured as that? Thank you Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President, Colleagues in the Senate. I have been reading the fine lines here, and I would like to return a question with a question through the Chair. My read shows that two intermediate State Appellate Courts have ruled one way, another Appellate Court has ruled another way. I see equivocation in this Attorney General opinion. Interestingly, the Supreme Court has not ruled here. So we don't need to play the Supreme Court, we can let them play their own game. My question would be, I'm reading what the Attorney General wrote, and it is not agreeing with what I am hearing on the floor, and I would appreciate an explanation. Thank you.

THE PRESIDENT PRO TEM: The Senator from Waldo, Senator Longley, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President, Men and Women of the Senate. The opinion says that the professional strikebreaker statute did survive constitutional challenge in some federal cases. It says that the exception is one where the statute in question touches interests that are so deeply rooted in local feeling and responsibility that it appears that Congress would not have intended to pre-empt the field. When we use the word unconstitutional, I think we sometimes use it too loosely. The issue really is whether Congress has so occupied this field of labor dispute that the states do not have the power to exercise their own police power, or discretion, in governing the field. The Constitution comes into play only because it's clear, from the constitution, that the federal government has the power to pre-empt the field. The federal government has the power to say to the states, "We are the one's that are running these labor disputes. We are the one's that issue statutes and regulations to manage labor disputes. And, because of the national interest in uniformity, you states have to keep hands off, even though there is the tenth amendment that suggests otherwise." The issue is, does the State of Maine, in the exercise of its police power, in exercising its own concerns about maintaining peace and civil order, does it have a little area where it can say, "Look, this is our local law. We have a local law that says we don't want out-of-state strikebreaking corporations of a certain size to come in here and foment violence of the sort that we have occasionally, and only rarely, seen in Maine." That's the issue. The Attorney General's opinion is very carefully drafted. It is not clear, in my view at least, and I think as a legislature we have a separate decision to make. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Mr. President, Men and Women of the Senate. I am always struck by the

irony of some of the things I hear in the Maine Legislature. It seems like an overwhelming theme I have heard since the elections of last November were that we should move stuff from the federal government to the state level. The feds shouldn't have the power to pre-empt the state authority. That we shouldn't hide behind the fact that the federal government supposedly occupies the entire field and that responsibility should be turned over to the states. Yet here we have a bill where the state is taking part of that authority, is assuming that responsibility, and yet people want to hide behind the fact that now the federal government should do this, now it's a federal government authority. We can't do it. It belongs in Washington. The question here is really a policy question, and the question is, are you going to stand behind Maine workers? Are you going to level the playing field? Are we going to fight to return to workers what they have labored for? Thank you.

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

Senator **MCCORMICK:** Thank you Mr. President, Men and Women of the Senate. I'm not a lawyer, and I, too, would like to get back to the merits of this bill. On the face of it it just makes sense to me. We have just turned down another bill that I believe would have leveled the playing field for Maine workers. Now we have before us an even more modest proposal that would decrease the tension in our State when there is a labor dispute. I have been talking to my constituents, as I'm sure you have, and what they are saying to me is they want the volume turned down. They want less conflict. They want less arguments. This bill does that. This bill, as it has been eloquently portrayed by the Senator from Somerset, Senator Mills, prevents professional strikebreaking companies from entering into our State when we have a labor dispute and fomenting violence. That just makes common sense. I urge you to support this bill and the Ought to Pass Report. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Rand.

Senator **RAND:** Thank you Mr. President, Men and Women of the Senate. I have to point out that this legislation, the proposed legislation, is consistent with current public policy as set forth in Title 26, section 851. I would like to read that to you. "It is the declared policy of the State, in the exercise of its police power, for the protection of the public safety, and for the maintenance of peace and good order, and for the promotion of the State's trade, commerce, and manufacturing, to assure all persons involved in labor strikes, or lock outs, freedom of speech and freedom from bodily harm, and to prohibit the occasion of violence and disorder. And, in furtherance of these policies, to prohibit the recruitment and furnishing of professional strikebreakers to replace the employees involved in labor strikes or lock outs." That is current Maine law. This legislation amends the law by defining strikebreaker activity. That would be professional strikebreakers who bring a hundred or more workers into this State to replace our workers more than three times in a five-year period. This is not ultra-legislation. This is very precise. More than

three times, more than one hundred replacement workers in a five-year period. Also, the bill repeals current criminal penalties, which have been the law since the previously stated section was enacted in 1965, and it replaces it with civil action for injunctive relief. That's all this bill does. It refines present legislation that has been on the books in this State since 1965. I urge you, in the name of the working people of this State, to please pass this legislation. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I, too, am not a lawyer. I, too, cannot answer legalistic questions. I, too, do not want to be in the position of voting for an unconstitutional bill. But, I would like to read you amendment ten of the Constitution of the United States, which has just been referred to. "Reserved powers to states. The powers not delegated to the United States by the constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people." So, I hope that that allays that fear. Secondly, let's talk about pre-emption. Let's talk about collective bargaining. If I'm not mistaken, the collective bargaining laws in this nation, and in this state, allow strikes. When you then allow professional strikebreakers, another entity, another business, to come in and pre-empt the reason for that strike, i.e. the workers in that business have said, "We can't work for management under these conditions. Therefore, we are exercising our right to strike." When you, in fact, bring in those workers, those professional workers, another business entity, into that procedure, you are, in fact, pre-empting the collective bargaining agreement and the LNRB. I rest my point. Mr. President, when the vote is taken, I ask for the Yeas and Nays. Thank you.

Senator **BUSTIN** of Kennebec requested a Roll Call.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President, Colleagues of the Senate. My mission, when I arrived in this Senate, was to work all my bills so that it increased the odds that Maine workers got more jobs. I will simply say that I see this bill as an opportunity to accomplish my mission, which is to see that more jobs go to our neighbors here in Maine. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BOENOIT:** Thank you Mr. President. May it please the Senate. Twice in this debate I have heard it said by a speaker that the speaker is not an attorney. That's fine. That's why we give questions to our attorney, the Attorney General. We did it here. Our attorney says very clearly, and I read, "It is the opinion of this department that it is very likely that both of the proposals in question would be found to be unconstitutional." It seems to me there is a regularity about government. Our attorney has so ruled and that will guide my vote. Thank you.

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

Senator **CAREY:** Thank you Mr. President. I would like to let my learned colleague from Franlin County, Senator Benoit, know that I am sitting on three different opinions from the Attorney General's office. It depends on who was writing the opinion as to whether they agreed or not. I have three opinions that all differ from each other, and that's exactly what they are, opinions. If you care to put your strength into the Attorney General's voice, then you can do that. I have learned, with some degree of disrespect, not to trust what is coming out of the Attorney General's office.

On motion by Senator **BUSTIN** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

The President Pro Tem noted the absence of Senator **BERUBE** of Androscoggin, and excused her from the following Roll Call vote.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion of Senator **RAND** of Cumberland that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **BUSTIN, CAREY, ESTY, FAIRCLOTH, GOLDTHWAIT, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, MILLS, O'DEA, PARADIS, PINGREE, RAND, RUHLIN**

NAYS: Senators: **ABROMSON, AMERO, BEGLEY, BOENOIT, BUTLAND, CARPENTER, CASSIDY, CIANCHETTE, FERGUSON, HALL, HARRIMAN, LORD, PENDEXTER, SMALL, STEVENS, and the PRESIDENT PRO TEM, Senator KIEFFER**

ABSENT: Senators: **CLEVELAND, HANLEY, HATHAWAY**

EXCUSED: Senator: **BERUBE**

15 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent and 1 Senator having been excused, the motion of Senator **RAND** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

Senate at Ease

Senate called to order by the President Pro Tem.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED** in **NON-CONCURRENCE**.

Sent down for concurrence.

The President Pro Tem requested that the Sergeant-at-Arms escort the Senator from Cumberland, Senator **BUTLAND**, to the Rostrum where he assumed his duties as President.

The Sergeant-at-Arms escorted the Senator from Aroostook, Senator **KIEFFER**, to his seat on the floor.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on **BANKING AND INSURANCE** on Bill "An Act to Authorize Participation by the Public Advocate in a Regulatory Proceeding Concerning the Residual Market Mechanism for Workers' Compensation"

S.P. 532 L.D. 1470

Majority - Ought to Pass as Amended by Committee Amendment "A" (S-217) (8 members)

Minority - Ought Not to Pass (5 members)

Tabled - earlier in the day by Senator **KIEFFER** of Aroostook

Pending - **ACCEPTANCE** of Either Report

(In Senate, earlier in the day, Reports **READ**.)

Senator **ABROMSON** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

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

Senator **KIEFFER:** Thank you Mr. President. This is a rerun of a bill, or a similar bill, that we have seen several times in the past when I was serving in the Banking and Insurance Committee in the last session of the Legislature. I believe that our Bureau of Insurance was established, and does exist, for the purpose of regulating these exact types of hearings, whether they be on Workers' Compensation or fire and casualty insurance, or any hearings that legally come before this body. I don't believe that it is necessary to keep funding this additional layer of bureaucracy on top of our regulatory authority. I fully understand I am in the minority, speaking against the report which the three fellow Senators are on, but I do have to speak my opinion on this, the same as I have in the past. I think it's just another unnecessary layer of bureaucracy. Our insurance department is very capable of performing the function of seeing that every party involved is entitled to a fair hearing, and they get a fair hearing. Thank you Mr. President.

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

Senator **MCCORMICK:** Thank you Mr. President, Men and Women of the Senate. I am the designated hitter for the majority report. Just to explain and clarify a couple of things, one, this is an amendment that all of the Senators agreed to. It lowered the cost of the bill. It provides for \$30,000 to be able to be used by the Public Advocate for consultants, that's a very important word, not for staff, not for any feathering of the nest, but for actuaries and people who he deems important to bring before the Superintendent of Insurance in any remanding, re-opening, or other proceedings of the fresh start. Just to clarify a point made by the good Majority Leader from Aroostook, Senator Kieffer, it's true that the Bureau of Insurance is the regulatory body here, but they act as a judge. They are a neutral party. They conduct the proceedings. It's employers on one side and it's workers' comp insurers on the other. You may be sure that the workers' comp insurers have acutary after actuary, and lawyer after lawyer, and consultant after consultant, bolstering their case. This merely seeks to level the playing field and give to the Public Advocate, a very modest ability to hire actuaries and consultants to bolster the employer's case for lowering workers' comp premiums. We think it is a modest proposal and it will help Maine employers. Thank you.

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

Senator **KIEFFER:** Thank you Mr. President. I would just like to point out the fact that in the original bill the request on this was for \$50,000. It was very readily reduced to \$30,000, and that

seems sort of like an arbitrary figure to grab at. I think it is an unnecessary amount and I believe the regulations can amply be enforced and handled by our insurance department.

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

Senator **MILLS:** Thank you Mr. President, Men and Women of the Senate. Just a couple of words about the Public Advocate's office. I don't always agree with the positions that they take, or the actions that they might take in front of the regulatory bodies where they represent the people who are paying them. On the other hand, to still that voice, to eliminate the voice altogether, and to say that the debate should be carried on without their input, I think, would be a big mistake. The amount of money at stake in the fresh start surcharge, the amount of money that is often at stake in front of the Bureau of Insurance, is hundred and hundreds of millions of dollars that is coming, directly or indirectly, out of the pockets of Maine citizens, in large measure through Maine businesses. For these very powerful, and very large, insurance companies to go down in front of an adjudicated body, and have no one on the other side of the floor to take a contrary position is a big mistake for the people of Maine. To give them \$30,000 to hire a competent actuary to come up to Maine and present a somewhat contrary view to those views that are espoused by the industry, I just think is very reasonable. Thank you.

On motion by Senator **LAWRENCE** of York, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **HARRIMAN:** Thank you Mr. President. I would like to pose a question through the Chair. I wonder if I might get a better understanding of what the \$30,000 fiscal note is meant to accomplish on the bill.

THE PRESIDENT: The Senator from Cumberland, Senator Harriman, has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Cumberland, Senator Abromson.

Senator **ABROMSON:** Thank you Mr. President. The fiscal note is for the hiring of an actuary or other consultants, to help the Public Advocate in his case representing the public before the Superintendent. I should point out that that's only if the cases that are pending now, and are in the court, are remanded to the Superintendent. I should also point out that in the event that the Governor's commission that was put together on fresh start should come up with some legislation, which they are going to do, if we should then pass that legislation, this would make the whole thing moot. It will not need the money because the litigation would be stopped.

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

Senator **HARRIMAN:** Thank you Mr. President. Good

afternoon Ladies and Gentlemen of the Senate. I appreciate the background information from the good Senator from Cumberland, my friend Senator Abromson. I posed the question because it is interesting to me to know that among the other duties the Public Advocate has, this is one of them. Yet, having an opportunity to review the Public Advocate's budget, it's already going up by over 8%. Yet the rest of State government's budget is only going up by about 2.3%, as things stand now. So, it is curious to me that the Public Advocate's office needs 8% additional increase in its budget, and now we are trying to find another \$30,000 to bolster it even more. I don't know what the answer is, but it seems curious to me. Thank you.

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

Senator **McCORMICK:** Thank you Mr. President. I might be able to shed a little light on that. This is outside of budget. This is not anything that goes for their staff, their overhead, their people, or anything that you would find in their budget. This is a \$30,000 fee that would be funded by assessments on insurers, workers' comp insurers, that would allow the Public Advocate to purchase the services of actuaries and consultants to balance, really, the actuaries and consultants that the workers' comp insurers bring in front of the Superintendent of Insurance in these remandings of the fresh start court case. I want to echo my good Chairman, the Chair of the Banking and Insurance Committee, Senator Abromson from Cumberland. We are putting this bill forward only if two things that we would rather not happen happened. The first is if we do not settle this whole question through the Governor's four by four task force, and things are looking good in that area. Secondly, if the Maine Judicial Court remands Superintendent Atchinson's fresh start decision back to him, then, and only then, and I will read from the bill, "any remand, re-opening, or other proceeding initiated by the Superintendent of Insurance in response to orders from the Superior Court, or the Supreme Judicial Court, concerning the residual market mechanism." Those are cases wending their way up, and they may get remanded back down, if so it will be like a new beginning, it will be a new argument, and Maine employers, as the Senator from Somerset said, Senator Mills, what's at stake for them is probably \$250 million. So, it seems like a small, but very important, step to take to level the playing field so that the arguments of Maine employers, as to what fresh start premiums and surcharges should be, at least equals the amplitude of the argument coming from insurers.

The President noted the absence of Senator **BERUBE** of Androscoggin, and excused her from the following Roll Call vote.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **ABROMSON** of Cumberland that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators: **ABROMSON, BUSTIN, CAREY, CARPENTER, ESTY, FAIRCLOTH, GOLDTHWAIT, LAWRENCE, LONGLEY, McCORMICK, MICHAUD, MILLS, O'DEA, PARADIS, PINGREE, RAND, RUHLIN**

NAYS: Senators: **AMERO, BEGLEY, BENOIT, CASSIDY, CIANCHETTE, FERGUSON, HALL, HANLEY, HARRIMAN, HATHAWAY, KIEFFER, LORD, PENDEXTER, STEVENS, and the PRESIDENT, Senator BUTLAND**

ABSENT: Senators: **CLEVELAND, SMALL**

EXCUSED: Senator: **BERUBE**

17 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 2 Senators being absent and 1 Senator having been excused, the motion by Senator **ABROMSON** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-217) **READ** and **ADOPTED**.

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

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on TAXATION on Bill "An Act to Create a Revolving Fund to Finance the Maine Quality Centers"
S.P. 543 L.D. 1491

Majority - Ought Not to Pass (11 members)

Minority - Ought to Pass as Amended by Committee Amendment "A" (S-216) (2 members)

Tabled - earlier in the day by Senator **KIEFFER** of Aroostook

Pending - **ACCEPTANCE** of Either Report

(In Senate, earlier in the day, Reports **READ**.)

Senator **HATHAWAY** of York moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

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

Senator **CAREY:** Thank you Mr. President, Members of the Senate. I think what you should know about this is that the Quality Centers are going to be funded for this year and next year, provided the Appropriations Committee puts it in their budget. What other legislatures do after that is their particular business. This item was submitted to us, in the Taxation Committee, to ensure that there would be continual funding. It sets up a fund where, for three years, the income tax generated to an employee by this fund would go into the reserve account, which would total only \$5 million, and then would not go any higher than that. That was the reason why I supported this particular item, because it insures that there would be continual funding for the Quality Centers.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator **Hathaway**.

Senator **HATHAWAY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. What this bill does is it dedicates the income tax that would be withheld from the earnings of the people who participated in the Quality Centers. I don't think we want to get into the practice of starting to dedicate people's income tax. I just don't think that is sound fiscal policy, or tax policy. It also comes with half a million, or better than a half a million dollar fiscal note. So, I urge you, please, to accept the Majority Ought Not to Pass Report.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **HATHAWAY** of York that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

The Chair ordered a Division.

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.

25 Senators having voted in the affirmative and 2 Senators having voted in the negative, the motion by Senator **HATHAWAY** of York to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, **PREVAILED**.

Sent down for concurrence.

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

COMMITTEE REPORTS

House

Ought to Pass As Amended

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Create an Honorary Position of Maine State Poet Laureate"

H.P. 692 L.D. 943

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-350)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-350)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-350) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **INLAND FISHERIES AND WILDLIFE** on Resolve, Establishing a Commission to Study the Trespass Laws (Emergency)

H.P. 954 L.D. 1343

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-344)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-344)**.

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

The Resolve **READ ONCE**.

Committee Amendment "A" (H-344) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **MARINE RESOURCES** on Bill "An Act to Limit the Size of Drag Nets Used in South Bay in Eastport"

H.P. 605 L.D. 815

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-358)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-358)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-358) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **TAXATION** on Bill "An Act Concerning Technical Changes to the Tax Laws" (Emergency)

H.P. 686 L.D. 937

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-347)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-347)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-347) **READ** and **ADOPTED**, in concurrence.

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

The Committee on **TAXATION** on Bill "An Act to Establish Municipal Cost Components for Unorganized Territory Services to Be Rendered in Fiscal Year 1995-96" (Emergency)

H.P. 701 L.D. 959

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-336)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-336) AS AMENDED BY HOUSE AMENDMENT "A" (H-368)**, thereto.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-336) **READ**.

House Amendment "A" (H-368) to Committee Amendment "A" (H-336) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-336) as Amended by House Amendment "A" (H-368), thereto, **ADOPTED**, in concurrence.

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

The Committee on **TRANSPORTATION** on Bill "An Act to Make Allocations from the Transportation Safety Fund for the Fiscal Years Ending June 30, 1996 and June 30, 1997" (Emergency)

H.P. 522 L.D. 712

Reported that the same **Ought to Pass** as **Amended** by **Committee Amendment "A" (H-348)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-348)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-348) **READ** and **ADOPTED**, in concurrence.

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

ENACTOR

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

An Act to Establish the Maine Outdoor Heritage Fund

I.B. 3 L.D. 717
(C "A" H-279)

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

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

COMMITTEE REPORTS

House

Ought to Pass

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Provide for the Dissolution of the Town of York School District"

H.P. 1009 L.D. 1424

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-378)**.

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

The Bill **READ ONCE**.

House Amendment "A" (H-378) **READ** and **ADOPTED**, in concurrence.

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

Senate

Ought to Pass As Amended

Senator **GOLDTHWAIT** for the Committee on **MARINE RESOURCES** on Bill "An Act to Encourage an Alternative Fishery"

S.P. 428 L.D. 1196

Reported that the same **Ought to Pass** as **Amended** by **Committee Amendment "A" (S-222)**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-222) **READ** and **ADOPTED**.

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

Senate at Ease

Senate called to order by the President.

Under suspension of the Rules, all matters thus
acted upon were ordered sent forthwith.

Senator CARPENTER of York was granted unanimous
consent to address the Senate off the Record.

On motion by Senator ESTY of Cumberland,
ADJOURNED until Wednesday, June 7, 1995, at 9 o'clock
in the morning.