

# MAINE STATE LEGISLATURE

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**Legislative Record**  
**House of Representatives**  
**One Hundred and Twenty-First Legislature**  
**State of Maine**

**Volume II**

**First Regular Session**

May 27, 2003 – June 14, 2003

**First Special Session**

August 21, 2003 – August 23, 2003

**Second Regular Session**

January 7, 2004 - January 30, 2004

**Second Special Session**

February 3, 2004 - April 7, 2004

Pages 777-1562

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE  
FIRST REGULAR SESSION  
65th Legislative Day  
Wednesday, June 4, 2003

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

Prayer by Reverend Paul D. Basham, Interim Minister at Penney Memorial United Baptist Church, Augusta.

National Anthem by Mahoney Middle School 8th Grade Band, South Portland.

Pledge of Allegiance.

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Representative DUNLAP of Old Town assumed the Chair. The House was called to order by the Speaker Pro Tem.

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The Journal of yesterday was read and approved.

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**SPECIAL SENTIMENT CALENDAR**

In accordance with House Rule 519 and Joint Rule 213, the following items:

**Recognizing:**

Kip O'Brien, of Bangor, who has been named the 2003 Volunteer of the Year by the Muscular Dystrophy Association. Mr. O'Brien, a firefighter with Bangor since 1988, has been instrumental in the past few years in coordinating Bangor Fire Department's "MDA--Fill-the-Boot Campaign" at Wal-mart. He and his wife also volunteer with the Muscular Dystrophy Association on their days off. We extend our appreciation to Mr. O'Brien for his commitment to the people of Bangor and congratulations to him on his receiving this award;

(SLS 253)

On **OBJECTION** of Representative BLANCHETTE of Bangor, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. It has been my distinct pleasure to know Kip O'Brien for many years more than I want to recall. I have also had the pleasure of knowing Kip's wonderful family. I can understand fully that Kip has been named Volunteer of the year, because of the relationship that he has had with his family and the upbringing of community and the caring spirit that the O'Briens have made a way of life, their whole life. They have passed this very, very honorable trait onto their son and he has brought his wife in on it to. I just wanted to go on record as saying that the residents of Bangor and the delegation from Bangor is very, very proud of Kip O'Brien and the continued dedication that he has for the Muscular Dystrophy Association. Thank you Mr. Speaker.

Subsequently, **PASSED** in concurrence.

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**Recognizing:**

Scott Bolduc, of Bangor, who is the recipient of the Firefighter Heroism Award for his act of courage in a fire on December 2, 2002. The award is given to an individual or group who performs an act of heroism above and beyond the call of duty. We extend our appreciation to Mr. Bolduc for his commitment and dedication to the people of Bangor and congratulate him on his receiving this prestigious award;

(SLS 254)

On **OBJECTION** of Representative BLANCHETTE of Bangor, was **REMOVED** from the Special Sentiment Calendar.

**READ** and **PASSED** in concurrence.

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**Recognizing:**

John Thornton, of Bangor, who is the recipient of the Firefighter Heroism Award for his act of courage in a fire on December 2, 2002. The award is given to an individual or group who performs an act of heroism above and beyond the call of duty. We extend our appreciation to Mr. Thornton for his commitment and dedication to the people of Bangor and congratulate him on his receiving this prestigious award;

(SLS 255)

On **OBJECTION** of Representative BLANCHETTE of Bangor, was **REMOVED** from the Special Sentiment Calendar.

**READ** and **PASSED** in concurrence.

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**Recognizing:**

Casey Perry, of Bangor, who is the recipient of the Firefighter Heroism Award for his act of courage in a fire on December 2, 2002. The award is given to an individual or group who performs an act of heroism above and beyond the call of duty. We extend our appreciation to Mr. Perry for his commitment and dedication to the people of Bangor and congratulate him on his receiving this prestigious award;

(SLS 256)

On **OBJECTION** of Representative BLANCHETTE of Bangor, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Bangor, Representative Blanchette.

Representative **BLANCHETTE**: Mr. Speaker, Ladies and Gentlemen of the House. These three fine young firefighters from Bangor have performed a job above and beyond the call of duty as far as I am concerned. This is what we train them for. This is what they know their job entails. All three of these have proven to me, once again, that every dime that I spent on my fire department in the City of Bangor is more than that paid by the three acts of heroism that these young firefighters have done. We are justly proud of them. We wish them the best of health and many, many more years of serving the people in the Bangor area who really do appreciate our fire department. Job well done men.

Subsequently, **PASSED** in concurrence.

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**Recognizing:**

United States Marine Corps Corporal Eric McCue, of South Portland, a graduate of South Portland High School and the son of Betsy Maxwell and Jeffrey McCue. Corporal Eric McCue was serving with the 3rd Battalion, 2nd Marines when he was deployed to Kuwait in January 2003. He participated in fighting near Nasiriyah during the war in Iraq and was seriously wounded by a land mine. He is now recovering from his injuries and has been the subject of an outpouring of good wishes for a speedy recovery. We gratefully acknowledge his dedicated service to his country, and we wish him well in all his future endeavors;

(HLS 659)

Presented by Representative MAIETTA of South Portland. Cosponsored by Senator BROMLEY of Cumberland, Representative GLYNN of South Portland, Representative BLISS of South Portland.

On **OBJECTION** of Representative MAIETTA of South Portland, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from South Portland, Representative Maietta.

Representative **MAIETTA**: Mr. Speaker, Men and Women of the House. I am going to try to be brief with this, because I know there are others who want to speak. Corporal Eric McCue is a great young man. He was long before this incident happened to him in Iraq. His family, which I have known personally for years, my kids knew their kids and South Portland is a close knit city any way. He graduated in June 2000. Two months later he joined the Marines to set off to do what he could do and what he felt was the right thing to do for his country. Eventually this past January he was shipped out and ended up at the end of February going into harms way.

Eric stepped on a land mine as he was patrolling his shift and doing what so many of us are unaware of except for what we are able to read in the papers or see on TV. It is hard until it hits home and you realize what these men and women are really doing over there for us. Sometimes we, at home, take things for granted. I am very proud that Eric is here with us today and we are not doing the sentiment in closing and adjourning in memory of.

We have all seen tragedy in our lives at one time or another. When I was 19 I lost a brother who was 15. My hardest part with that was seeing my parents suffer. That was 28 years ago. My daughter called me the day after this happened to Eric and left a message on my cell phone when we were here. She made the comment that something had happened to Eric. I called her and she was visibly upset on the phone. I called Jeff, Eric's father, who was just beside himself. They had no information as to where he was, how bad he was hurt. They had no information except that he had stepped on a landmine and at that point it was reported that his left foot had been blown off. When I got home from here that night I went directly to Jeff McCue's house. The look on his face reminded me of the look on my parent's face when I lost my brother 28 years ago. To see these families suffer the pain that at one time or another we all do, hit home again with me after 28 years. Still after 36 hours they had no idea where he was, how bad he was or where he was heading.

I had just as much pride in this family for the endurance that they went through waiting and wondering, which we all dread. I welcome Eric home. He is a South Portland hero. It was great to have the kids from Mahoney here today doing our National Anthem.

As others will speak on this, I just want to let it be known that Eric came home for 30 days to rest. He has not rested yet. He has been everywhere. He has been going to the schools, the elementary schools, the high schools. He is doing it with an attitude that is unbelievable. He is more concerned about his unit than he is himself. He is a great individual. When we all stand today, just remember those two feet we are standing on and enjoy them and don't take them for granted. Thank you very much.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from South Portland, Representative Bliss.

Representative **BLISS**: Mr. Speaker, Men and Women of the House. I first want to thank my good friend, the Representative from South Portland, Representative Maietta, for facilitating this visit today. I know that our guest has not had much rest and I think it is terrific that we were able to do this.

I rise today to congratulate a Maine hero, not just a Maine hero because he was born and raised in the beautiful city of

South Portland, although he was, and not because he was born and bred to be a professional military man. In fact, I rise today to congratulate him as a Maine hero precisely because he was not born and raised to be a professional military man. Corporal McCue is a typical American young man from a typical American family who decided that he wanted to fight for his state and his country. Because of that, I salute his patriotism. I salute his dedication. I salute him because he is truly a Maine hero. Thank you Mr. Speaker.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from South Portland, Representative Glynn.

Representative **GLYNN**: Mr. Speaker, Ladies and Gentlemen of the House. I rise to echo and to add to the comments that have been given regarding Corporal Eric McCue. Corporal Eric McCue is a true hero. He is an inspiration to us all. Over the last several months during the conflict in Iraq, we had a number of resolutions that we addressed both locally and here in Augusta. We saw many patriots come out in support of the troops out near the Maine Mall in South Portland claiming their patriotism. All that pales in comparison to the commitment these fine men and women have done for all of us, protecting our lives, our liberties and fighting for us in Iraq. One such great American hero is Eric McCue.

South Portland has been so blessed and so fortunate to have the McCue family be a fixture of our community for so many years. We are so proud of what this great man has done for his country, for his state and for his city. I join with all those that have commented and I urge you all to join with me in our strong support for these great achievements and this great American hero.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative **TREADWELL**: Mr. Speaker, Men and Women of the House. We have five former Marines serving here in the Maine State House of Representatives. I know Eric doesn't need to be reminded of this, but for those of us in the chamber who are not aware, I would like to just mention that when we joined the Marine Corp and became a Marine there is a bond that develops among Marines that lasts throughout our lifetime. Once a Marine always a Marine as the word goes. I want to thank you, Eric, for your service to the country, our country and to the US Marine Corp. We wish you a quick recovery and on behalf of all of your Marine Corp friends, Semper Fi. I would like to remind the House also that Eric received the Purple Heart as a result of those wounds that he got in Iraq. Thank you Mr. Speaker.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Sanford, Representative Landry.

Representative **LANDRY**: Mr. Speaker, Ladies and Gentlemen of the House. First of all, I would like to thank my colleagues on both sides of the aisle that are Marines for allowing me to speak to this particular sentiment. Being retired Air Force, I have always had the traditional grudge with the Marine Corp. That is something that we don't take too serious at this point in our lives. I have always been very proud and privileged to serve in this House along with colleagues who are Marines.

I would just like to say a couple of things concerning this sentiment. Corporal McCue I met for the first time about an hour ago right here. I don't go back years with this family. I am aware of the tradition within the Marine Corp that they started the tradition in all of the services Esprit de Corp, the spirit of the corp. The spirit of the corp is most prevalent in the Marines. I know this from first hand knowledge of serving in hazardous areas with Marines in a support capacity. I always joke with some of my colleagues that are Marines about being the ones who took them

there and took them back out when they remind me that they were first in and last out.

I would like to talk for just a moment about another kin ship that exists among the military. It exists between a certain group of military. Those are people that have seen hazardous duty. This is kind of a unique situation for us this morning. We have veterans who have seen combat in World War II, Korea, Vietnam and Iraq all in the same room at the same time. That is indeed unique. One thing that these people have in common is we all served under hazardous conditions. We saw what it is like, hell on Earth that we like to call conflicts or wars. Some of us came back totally unscathed. Some of us didn't come back. Some of us came back and later developed problems. We all came back with the same bond. This bond came to light during the Vietnam era when our soldiers and sailors and airmen returned from Vietnam and were not greeted as heroes. They were not greeted with any respect at all until just a few years ago. They developed their own greeting. They developed their own kinship and they bonded with those other veterans from other wars, other conflicts, from other police actions and they started to call each other brother and sister. You may have heard at social events a couple of Vietnam vets greeting each other saying, welcome, welcome home brother, welcome home sister.

I rise this morning with great pride in being associated with my fellow combat veterans, regardless of their branch. I rise with great pride in being associated with these people. I particularly want to express the pride I have and the privilege that I have of saying to Corporal Eric McCue, welcome home brother.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative MURPHY: Mr. Speaker, Men and Women of the House. I had the opportunity to meet and talk with Eric before the session. We have read press accounts and we have seen the TV accounts on how his character comes through and how he is reflected on his family, his unit and the corp. This would be the point where life advice would come in, Eric. All those stories talk are about he wants to get back out on the golf course. Actually the last couple of months you would have needed a boat to do that here in Maine. When we presented the Marine Corp battle flag to Eric before the session, I think he looked around at the Marines and saw the body types and when he stands up you will see there is a distinct difference between ours and his. Eric, the life advice, when you get back out on the course, save a couple bucks, don't rent a cart and walk.

Subsequently, **PASSED** and sent for concurrence.

**Recognizing:**

Arnold Poland, of Dover-Foxcroft, who is the recipient of the Hall of Fame Award by the Music Educators Association. This award recognizes music educators who, by virtue of their contributions, are the most highly regarded professional leaders in music education in the State. As an active music educator at Foxcroft Academy, Mr. Poland has not only made a significant contribution to the school's music program, but he has been an inspiration to the students. We extend our congratulations to him on his achieving this distinctive honor;

(HLS 664)

Presented by Representative ANNIS of Dover-Foxcroft.

Cosponsored by Senator DAVIS of Piscataquis.

On **OBJECTION** of Representative ANNIS of Dover-Foxcroft, was **REMOVED** from the Special Sentiment Calendar.

**READ.**

The SPEAKER PRO TEM: The Chair recognizes the Representative from Dover-Foxcroft, Representative Annis.

Representative ANNIS: Mr. Speaker, Ladies and Gentlemen of the House. I guess the sentiment pretty much says it all. Arnie is of a subdued demeanor. He really doesn't come forward in a grand manner. He kind of works behind the scenes. He is not much for fanfare. He is also, a leader of the academy band, he is leader of the community band in Dover Foxcroft. He leads the church choir and he is skilled in most instruments. I tried to get him down here today, but he excused himself with the fact that he has finals this week. They need attending to. That is the type of man that Arnie is. To know him is to know somebody special, but he really doesn't show it. Thank you Mr. Speaker.

Subsequently, **PASSED** and sent for concurrence.

**BILLS RECALLED FROM GOVERNOR**

(Pursuant to Joint Order 2003 - House Paper 1208)

An Act To Improve Enforcement of the State's Natural Resource Protection, Timber Theft and Trespass Laws

(H.P. 1059) (L.D. 1447)

(H. "A" H-511 to C. "A" H-456)

- In House, **PASSED TO BE ENACTED** on May 28, 2003.

- In Senate, **PASSED TO BE ENACTED** on May 29, 2003.

On motion of Representative PINEAU of Jay, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENACTED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENGROSSED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (H-456)** was **ADOPTED**.

The same Representative **PRESENTED House Amendment "B" (H-547)** to **Committee Amendment "A" (H-456)** which was **READ** by the Clerk and **ADOPTED**.

On further motion of the same Representative, the rules were **SUSPENDED** for the purpose of **FURTHER RECONSIDERATION**.

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **House Amendment "A" (H-511)** to **Committee Amendment "A" (H-456)** was **ADOPTED**.

On further motion of the same Representative moved **House Amendment "A" (H-511)** to **Committee Amendment "A" (H-456)** be **INDEFINITELY POSTPONED**.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House. This puts LD 1447 back into the posture it was when we sent it to the Governor's desk and passed it be engrossed. Thank you Mr. Speaker.

Subsequently, **House Amendment "A" (H-511)** to **Committee Amendment "A" (H-456)** was **INDEFINITELY POSTPONED**.

**Committee Amendment "A" (H-456)** as Amended by **House Amendment "B" (H-547)** thereto was **ADOPTED**.

The Bill was **PASSED TO BE ENGROSSED** as Amended by **Committee Amendment "A" (H-456)** as Amended by

House Amendment "B" (H-547) thereto in NON-CONCURRENCE and sent for concurrence.

The Speaker resumed the Chair.  
The House was called to order by the Speaker.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

The following items were taken up out of order by unanimous consent:

The following item was taken up out of order by unanimous consent:

**UNFINISHED BUSINESS**

The following matter, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

An Act To Improve Collection of Information about Work-related Injuries and To Enhance Injury Prevention Efforts

(S.P. 135) (L.D. 398)

(S. "A" S-239)

TABLED - June 3, 2003 (Till Later Today) by Representative DUPLESSIE of Westbrook.

PENDING - **PASSAGE TO BE ENACTED**.

Representative TREADWELL of Carmel **REQUESTED** a roll call on **PASSAGE TO BE ENACTED**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is Enactment. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 216**

YEA - Adams, Ash, Barstow, Bennett, Blanchette, Bliss, Brannigan, Brown R, Bull, Bunker, Canavan, Carr, Churchill E, Clark, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Fischer, Gerzofsky, Goodwin, Grose, Hatch, Hotham, Hutton, Jackson, Jennings, Kane, Koffman, Landry, Laverriere-Boucher, Lessard, Lundeen, Mailhot, Makas, Marley, McGlocklin, McKee, Mills J, Mills S, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Saviello, Simpson, Smith N, Smith W, Sukeforth, Sullivan, Suslovic, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Berry, Berube, Bierman, Bowen, Bowles, Browne W, Bruno, Bryant-Deschenes, Campbell, Churchill J, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Daigle, Davis, Duprey B, Fletcher, Glynn, Greeley, Heidrich, Honey, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lemoine, Lerman, Lewin, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson E, Richardson M, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sykes, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Breault, Cowger, Dugay, Gagne-Friel, Ketterer, Marraché, McLaughlin, Perry J, Rogers, Tardy.

Yes, 78; No, 63; Absent, 10; Excused, 0.

78 having voted in the affirmative and 63 voted in the negative, with 10 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

**UNFINISHED BUSINESS**

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

HOUSE DIVIDED REPORT - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (H-66)** - Minority (5) **Ought Not to Pass** - Committee on LABOR on Bill "An Act To Encourage Workers' Compensation Dispute Resolutions"

(H.P. 438) (L.D. 575)

TABLED - April 1, 2003 (Till Later Today) by Representative SMITH of Van Buren.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. This is the first bill that we have had this year that relates to prevail. This is not a full-fledged prevail bill, but it is nibbling at the edges. What the bill will do is provide a surcharge of \$1,500 for any employee who in proceeding through the workers' comp dispute resolution procedure gets through the formal hearing phase and gets a settlement that is any greater than that which was originally offered. The hearing officer can access a surcharge on the employer of \$1,500 which would be paid into the Workers' Comp Administrative Fund for support of the Worker Advocate Program.

The employers already pay the total cost of operating the workers' comp system. They do it by an assessment. LD 35 that we passed yesterday is the bill that provides that funding. This is an additional surcharge that would be levied against an employer in the event that an employee receive more in a settlement than they had originally been offered. I would urge you to vote against the bill. Mr. Speaker, I would request a roll call.

Representative TREADWELL of Carmel **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House. Let me start by giving you a short explanation of exactly how the Workers' Compensation Board's mission is and how it is financed. The Workers' Compensation Board is set up in order to administer the Workers' Compensation Act and provide a mechanism for resolving disputes with regard to the payment of compensation. It does this independently of the Governor's budget. Yesterday we approved the budget of the Workers' Compensation System.

I think it is important to remember what we did yesterday. Yesterday we increased the workers' compensation budget from \$7 million to \$8.3 million for this year. I think it is \$8.5 for next year. We need to consider what is driving up the workers' compensation costs. The workers' compensation budget is going to be passed onto the employers by way of a charge that is made upon the premiums that are being charged by the insurance companies. Under our present law, every insurance company is

assessed that same percentage regardless of how many cases they dispute, regardless of how meritorious their defenses are, they all pay the same thing, the good and the bad.

What this bill tries to do is bring in some kind of equity and cost shifting so that those insurers who are taking up the time and resources of the board in dispute resolution and causing the increased costs to pay more.

You have received a handout and there is some very significant data in this handout. First of all, the State of Maine, when compared to the rest of the nation, has a much higher percentage of claims that are disputed than the other states. We are at something like 27 percent compared to 4 or 8 percent in other states. What does this mean? It means that our Workers' Compensation Board budget is going to be higher because we have more disputes.

I would like you to turn to the next page. What is driving the increases in the costs of the workers' compensation budget is the Worker's Advocate Program. This Program went from \$151,000 budget in 1997 to 2003 and it is now almost \$1.5 million. This number will be going up unless we do something about it. As there are more cases that come into the system after 1992 who are worker advocate cases, you are going to find that budget rises and rises.

What this bill does, LD 575, is it tries to shift the cost from the responsible insurance companies to those who are bringing the disputes. If a worker prevails in their claim after hearing, the insurance company will be paying \$1,500 into the Workers' Compensation Board budget for the Worker Advocate Program. This is not paid to the employee. It is not paid to any attorney for the employee. It goes straight into the budget. When you stop and think that right now all the companies are assessed for the cost of dispute resolution. The effect of having these \$1,500 surcharges come in is that there is going to be a reduction on the overall assessment because those who are causing the disputes and pushing it to hearing will be paying a larger percentage.

We ask you to look at this very carefully. We do have a problem that needs to be fixed. We are not going to be costing employers any more. What we are doing is shifting costs towards those insurance companies whose disputes are driving the budget up. If this comes into effect there is going to be an encouragement for insurers to settle their cases at mediation or to make offers that would be acceptable prior to going to hearing. Right now there are too many cases being stonewalled, too many hearing officers tied up, too many employee advocates being tied up in the system. One thing you should also know is that presently there are over 2,000 cases pending for hearing with the Advocate System and with 12 advocates to handle the work. There is no way they can do it. It is time to take the incentive out for insurers to stonewall their cases and not adjust them properly. It is time to encourage them to resolve these disputes without going to hearing and stop the disputes that are raising the costs of the board budget. Thank you. I ask you to vote in favor of this.

The SPEAKER: The Chair recognizes the Representative from Oxford, Representative Heidrich.

Representative **HEIDRICH**: Mr. Speaker, Ladies and Gentlemen of the House. This is just another way of making it more difficult to do business in our state. During the committee hearings, a representative from the Chief Executive told us they were very unhappy with this bill and would not support it.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. I sympathize with anyone here who feels that if they vote in favor of the workers' compensation bill

that they will face reprisal from their constituent and will hear about it at the next election. There is a different way to look that this bill and the other bills that are being brought forward. This bill, in fact, will reduce the cost of workers' compensation to your constituents for a very simple reason. It will reduce what is now the leading number of litigated cases in this country. Better than one in four cases in this country is taken through litigation and workers' compensation all the way to formal hearing. Something else you need to know and your premium paying employers need to know, 100 percent of those disputed cases involve insurance company attorneys defending them.

Employee advocates will represent injured workers. Some lawyer will represent injured workers, but in 100 percent of the disputed cases, insurance carriers and the self-insured trusts are hiring lawyers. They are paying them by the hour. They have absolutely no incentive for early resolution of the case. It is just that simple. This system has a huge gap in it, a huge hole in it that lawyers have figured out a way to fill. That is to delay cases all the way to formal hearing. If they lose, so what. Your ratepayers, your constituents will pay interest on the eventual award, but, again, so what. What is wrong with dragging it out.

There is no incentive currently in this system for early resolution. You will recall some of you who were here in the early 1990s when the Blue Ribbon Panel was putting the system together. That was one of the pillars of the early reform, early resolution. It hasn't worked out that way. Even though we have developed a Worker Advocate Program, which is now up to 12 of these hardworking dedicated young people, they simply cannot handle a caseload that involves, as of today, over 2,000 litigated cases. There are 2,000 cases in litigation for 12 employee advocates. That is a caseload of 166 cases in litigation at one time. I have had attorneys resign on me for having caseloads half that size.

All this bill does, and other bills that will follow, is try to provide some incentives for early resolution and some minor penalties for not resolving those cases. I will predict one more thing in closing. This bill and the incentive built into it will be very rarely actually awarded. It's existence in the system will be enough to encourage an insurance carrier who is disputing a claim to negotiate and try to find some way to resolve that case early on or risk the \$1,500 penalty. Right now there is absolutely no risk to delaying that case all the way. It doesn't cost a dime more except the money it is costing your constituents to pay defense attorney fees. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Arundel, Representative Daigle.

Representative **DAIGLE**: Mr. Speaker, Ladies and Gentlemen of the House. There is something strikingly familiar about this proposal before us. We have heard it before in Natural Resources. The concept was when you catch somebody violating our environmental laws, he should pay that money into the department. We have always avoided that for one very good reason. We know the department never has enough money and obviously if there is a way to increase that, there will be an unreasonable incentive on them to contort the decisions made to result in an outcome that will bring more revenue into that area.

I am not suggesting that the people in this system would do the same, but certainly they will be accused of that. It will taint the process. To some extent the same way we do not let a police officer write speeding tickets in order to go into his back pocket or the budget of the police department, I think it is unwise public policy. If this bill were proposing a penalty that would go into the general fund, I think that would be far better received. Pouring it back into the system that originates the enforcement action and

makes a decision about who and who should not pay is a very unwise policy and I recommend opposing this. Thank you.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House. There are two things that I want to respond to. We have heard it so many times that Maine is more difficult to do business in. That means that we don't think any further about any issue. One of the handouts that you have before you establishes that as of 2001 Maine was the fifth most profitable state for the workers' compensation insurance companies doing business in Maine. We are one of the leaders in the nation for the profitability of these workers' compensation insurers. I think that is striking. Yes, indeed, we are already one of the states that workers' compensation companies want to do business with. We have gone from having MEMIC being one of the few to now having somewhere in the neighborhood of 150 insurance companies that want to write this very profitable business. The other thing that I would like you to consider is that we have heard about workers' compensation premiums going up, but what you haven't heard enough about is the fact that the actual benefits being paid out in this state to the injured workers has gone down every year since 1993. The level of monetary benefits has gone down year after year.

There is a question to be asked, but that is a question that should be asked by the employers to their insurance companies. Why are our premiums going up if the benefits being paid out are going down? There is a huge question to be asked. I hope at some point the employers will get together and start asking their companies that question.

One last point with regard to the previous speaker. This is a different system than the Maine Department of Environmental Protection. The Workers' Compensation Board assesses the costs on all the insurers equally. This bill allows more of the cost of dispute resolution to be placed upon the insurance companies who are causing the disputes. This is why it makes sense. Thank you.

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative TREADWELL: Mr. Speaker, Ladies and Gentlemen of the House. We have heard a couple of comments about the pre-1992 situation in the Workers' Comp System and what we have today. I just wanted to make my own comments regarding the history of what is happening then and now.

I came to the Legislature in the 119th Legislature and there were still cases that were bottlenecked in the system from pre-1992 and the prevail standard was causing all this churning in the system. There were unnecessary and undo delays in dispute resolution. It was taking somewhere in excess of two years plus to get a case through the formal hearing stage and final resolution.

Today, with the worker advocates, we were told by the Executive Director of the Comp Board that a case can now proceed through the system from beginning to final resolution at formal hearing in about eight months, a little less than eight months. If they try to do it any faster than that, there is a possibility of violating the due process rights of the injured employee. We are, right now, doing as efficiently as we can in processing cases through the Workers' Comp System. The cost of the system went down from the time that the reforms were implemented until about 1999 and at that time they bottomed out with about a 30 to 35 percent reduction in rates. Since then, they have been gradually going up again. There has been an increase in rates.

I have a graph here that was given to us during the hearing on this bill. It shows the costs to Proctor and Gamble for all of their plants in the United States. They said that the cost per employee for their workers' comp was about \$27 per employee, which ranks the State of Maine number eight in the country for workers' comp costs. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative WATSON: Mr. Speaker, Men and Women of the House. Very briefly, the rep from Carmel, Representative Treadwell, I am afraid is mistaken as to what he observed when he joined this body. In fact, in the first few years after the Workers' Compensation Act was reformed, in other words when the 1992 reforms went into effect, there was no Worker Advocate Program. Employee lawyers, as you know, were taken out of the system. As the time, in those early years, employees were forced to represent themselves before the Workers' Compensation Board.

I will tell you from my own experience that a worker's compensation hearing, a formal hearing, that involves testimony of witnesses, deposition testimony of doctors, review of medical records and sworn testimony, typically today, when the system is running properly and attorneys are running the system, that might take 45 minutes to an hour. When an unrepresented claimant in the early years of this act got to the formal hearing stage, he would walk in without even knowing that he was required to bring medical evidence, to have his records Xeroxed and labeled as exhibits. He did not know that he was required to bring a witness. He did not know how to cross examine the witnesses brought against him. Again, these cases, remember, are all defended by experienced attorneys.

The hearings in those days, according to the hearing officers who did them and people like myself who observed them, would take anywhere from four to five hours to accomplish, because at every step the unrepresented employee had to be coached through the process. He had to explain exactly what was happening. What would happen next? How could he testify? How he could cross examine? The system crashed. The Representative from Carmel is correct in the length of time it was taking. The system became completely bogged down. It wasn't because of prevail. Prevail had nothing to do with it. Prevail had to do with two lawyers running a hearing with a hearing officer. After prevail, the early years of this law, involved unrepresented claimants. As a result, this body then enacted legislation that enabled the Workers' Comp Board to hire worker advocates, train them and make them available to injured employees to help them through the system. That is what started speeding up the process. I agree the process has sped up. It is up to a point where a typical claimant can wait eight or nine months to get his claim. This bill, and the bills that follow, will attempt to cut that even shorter by making many of those formal hearings completely unnecessary by providing some incentive for insurance carriers to negotiate and resolve the claims prior to the hearing. They are still free to go and defend the claim if they think they can win it completely. They are still free to defend the claim if they offer the employee 50 percent benefits and he turns it down and ends up losing at the hearing. All this bill is requiring them to do is to negotiate, to make an offer, to attempt to come to some resolution to solve that claim before the inevitable happens. The inevitable, Mr. Speaker, as many of us know, is the loss of a house, the loss of a vehicle and the employee's family ending up on Medicaid. Thank you.



The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative **BRUNO**: Mr. Speaker, Men and Women of the House. It has been a very interesting debate so far. I have been sitting in my chair listening going, I don't understand that. I would like to point your attention to this handout that came around. The first thing that hit me is it says Coopers and Lybrand Consulting, a company that hasn't been around for three years anyway. I looked at the date on this and it was 1997 when this report came out. I would like to know where we are in 2003, not 1997. I don't know why we picked Wisconsin since their industry is maybe similar to ours. I don't think so. I would like to have a direct comparison to a state that is very similar to ours in population, work force and industry. I go onto the next page talking about taking a look at how the budget has increased. I have to remind you that these budgets were supported by the Maine Legislature almost unanimously to increase the number of workers advocates out there just so we don't get bogged down in what is going on in the Workers' Comp System. We have assessed more money on companies to hire more worker advocates and make the system easier for the injured workers. I go to the last page showing how all these insurance companies are coming to Maine because it is very profitable to do business there. The fact of the matter is, MEMIC writes 60 to 65 percent of all policies in this state. They are a non-profit. If they are writing that much policy and they are a non-profit, how can they be making a profit?

I think really the question is whether or no you want to bring prevail back into the system. It says if the plaintiff wins, the attorney gets \$1,500 more. That is what the bill says and that is the question. I think there are a lot of questions about the bill and motivations behind it. I am not sure we want to do this. I don't think it is a good idea to add costs to the system. That is what it does. It brings back a mini-prevail. There has never been any requirement that an injured worker cannot hire an attorney. They have every right to. If they can't afford one, that is what the Worker Advocate System is for. Thank you Mr. Speaker.

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

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. My knowledge of this whole subject bounces between slim and zero. One thing I would really like someone to explain to me is the second page of the handout where we show the figures. I don't know what we are talking about. It runs from \$150 million to a \$1.5 billion, which is quite an increase over a period of six years. That is my question. What are the figures telling me and why did they increase so dramatically over a short period of time? Thank you.

The SPEAKER: The Representative from Skowhegan, Representative Richardson has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. I appreciate the question from the good Representative from Skowhegan. The second page of the handout talks about the costs of the Workers' Advocate Program. I guess the question is, what is driving the increases? What is driving the increases is that Maine unfortunately is leading the country in terms of the number of cases that are being disputed. We have a far, far too high percentage of cases that are disputed right to hearing. Every dispute is going to cost money. It takes up advocate time. It takes up hearing officer resources. It takes up board resources. The more disputes you have, the more you can expect the advocate program to increase its budget. The

other thing is that this figure is going to be going up higher every year because of necessity as you have more people being injured year after year. Since 1992 the injured workers are all candidates for the Worker's Advocate Program. They are the ones to be represented by them. We have more and more injured workers every year coming into the system and needing the services of the advocate program. It is a combination of these two things. One, there are more and more employees that are needing the services each year. Two, we have done nothing to stem the huge amount of cases being disputed in our system. This bill tries to stem that problem.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. In brief response to Representative Bruno's question concerning the last page of your handout, table 2, NCCI, for those of you who don't know, is that national organization that comes in here yearly and testifies before the Bureau of Insurance here to justify whatever rate increases the workers' compensation carriers are trying to accomplish. They publish their data regularly. This data, without going into actuarial explanation, involves loss ratios. Loss ratios are the measure from which profitability is taken. Maine, as you see, is fifth down the list, which means that Maine is indeed the fifth most profitable to write the line of business in workers' compensation insurance.

If you notice in the brief explanation above the claim, above this table, these statistics take into account MEMIC's numbers. We are not dealing with profitability here, earnings in a non-profit organization. We are talking about loss ratios. They do, in fact, take MEMIC's numbers into account as they do the other states they have listed that have state funded insurers. I can refer questions on what constitutes a loss ratio if you like. However, very briefly, the fourth column of number, the combined ratios, if you want to figure them dollars and cents, that is the amount of money returned on \$1 premium paid. Maine currently is paying out \$1.01 for every dollar collected in premiums on a loss ratio basis as compared to Indiana, which is paying out \$.92 for every dollar they collect. The total average is \$1.15 for the \$1 collected in premium. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Treadwell. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. I hate to get into this rebuttal and statement processes that we are going through right now. I have to respond to the comments that the Workers' Advocate Program is not working. They have such a tremendous workload and that is the reason there is an increase in costs to the system. I don't think that that is the case. We don't have any more advocates than we had two years ago in 1999 when we passed the Worker's Advocate Program. I think it is 10 advocates at the current time. We initially funded the program, I was here when it happened, at \$600,000. This year the estimate is that is going to cost \$1.6 million to operate that program. Those advocates have done an exceptionally good job. They took a backlog of cases and whittled it down to this point now, as I said earlier, they can take a case into the system and have final resolution in under eight months. They really can't go any faster than that. The

comments that the system is broken and we have to do something to accelerate it really doesn't hold water.

The incident of injuries have gone up in the last couple of years, but by a very small amount. We had a very aggressive safety program early on after the workers' comp reforms came in. We have to give MEMIC the credit for that. They had a very good safety program that reduced the incidence of injuries in the workplace by a significant amount. I don't have a percentage, but there was a significant decrease in the amount of injury. That was one of the factors that lead to the decrease in the premium because we didn't have so many injuries, which means we didn't have as many cases in the system. I hope that helps for the folks to understand what is going on.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative SMITH: Mr. Speaker, Ladies and Gentlemen of the House. Briefly in response to the good Representative from Carmel, we are not saying that the system is broken. What we are saying is that we are overloading right now the advocate system and causing it to go up every year. We are saying that it is going to happen as a matter of course because each year there are more people being injured so there are more people who are looking for the advocate services. We need to take out the level of dispute.

The other thing I would submit to you is that this eight-month time for a case to be processed is only the time it takes from the time the petition is filed. There are huge numbers of cases with the advocate system where the advocates have not filed any petitions yet because they don't have the time to. Once a case gets filed, then it is on a fast track. It gets set for mediation. It gets set for hearing. It has to move. There are a huge number of cases that have simply not been filed yet, employees who are being delayed, some up to two years or so simply because the advocates don't have time to handle each case. We have a system that was designed to provide representation to injured workers. We need to refine it so that there are less disputes and give these advocates a chance to get the cases done.

The SPEAKER: The Chair recognizes the Representative from Cornville, Representative Mills.

Representative MILLS: Mr. Speaker, Men and Women of the House. I have been observing the system for 31 years. I have represented insurance companies for about 10 years and injured employees for about 20 and I have seen the system for a long time. We have experimented in Maine with about every system imaginable for trying to resolve disputes and for compensating people who assist in the resolution of those disputes.

One of the things that has bothered me about the present system is that there is too much litigation in it. There are not enough claims that are accepted by agreement. When an insurance carrier refuses to pay a claim absolutely nothing bad happens to that company if the thing goes through litigation and they use the system and the employee eventually recovers some benefits. It seems to me that if any of you here don't like lawyers very much, this might be a good bill to vote for, because it will say that if the people who are using the system on the defense side are overusing it and taking cases through to formal hearing without merit or with not enough merit to prevail, then at least the expense of operating the system would be born a little bit more by them than by all of the other employers who never use the system.

Right now there is a charge that is imposed on me, as an employer and on every one of you who owns a business and has

to buy workers' compensation insurance. There is a component of your premium that goes to fund the operation of this \$6 million or \$8 million system. To have those who use it all the time, perhaps inappropriately, pay a little bit more for their use or perhaps their abuse of the system makes some sense from the perspective of social engineering if I can use that term. It should have the impact of reducing litigation. I do believe there is too much litigation in this system. I do believe that some of my friends in the legal business should have less work to do in this system. I think that the fault right now clearly is on the side of the defense bar and the insurance claims people who have a way of denying even the most obvious claims because they can do so presently with complete impunity.

I think this bill is a modest little bill. It will serve to redistribute costs in a way that makes some sense and it might succeed in reducing some of the needless litigation that you see from time to time in this unfortunate and seemingly perpetually crippled system. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

#### ROLL CALL NO. 217

YEA - Adams, Ash, Blanchette, Bliss, Brannigan, Bull, Bunker, Canavan, Clark, Cowger, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Gerzofsky, Goodwin, Hatch, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Landry, Laverriere-Boucher, Lerman, Lessard, Mailhot, Marley, McGlocklin, Mills S, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Perry A, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Simpson, Smith N, Smith W, Sullivan, Thomas, Thompson, Usher, Walcott, Watson, Wheeler, Mr. Speaker.

NAY - Andrews, Annis, Austin, Barstow, Bennett, Berry, Berube, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill E, Churchill J, Clough, Collins, Courtney, Cressey, Crosthwaite, Curley, Daigle, Davis, Dugay, Duprey B, Fischer, Fletcher, Gagne-Friel, Glynn, Greeley, Grose, Heidrich, Honey, Hotham, Jacobsen, Jodrey, Kaelin, Ledwin, Lemoine, Lewin, Lundeen, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Mills J, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Percy, Perry J, Rector, Richardson E, Richardson M, Rogers, Rosen, Saviello, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Woodbury, Young.

ABSENT - Breault, Joy, Makas, Marraché, McKee, McLaughlin, Peavey-Haskell, Suslovic, Twomey, Wotton.

Yes, 62; No, 79; Absent, 10; Excused, 0.

62 having voted in the affirmative and 79 voted in the negative, with 10 being absent, and accordingly the Majority Ought to Pass as Amended Report was **NOT ACCEPTED**.

Representative PERCY of Phippsburg moved that the House **RECONSIDER** its action whereby the Majority Ought to Pass as Amended Report was **NOT ACCEPTED**.

Representative BRUNO of Raymond **REQUESTED** a roll call on the motion to **RECONSIDER** whereby the Majority Ought to Pass as Amended Report was **NOT ACCEPTED**.

On motion of Representative RICHARDSON of Brunswick, **TABLED** pending the motion of Representative PERCY of Phippsburg to **RECONSIDER** whereby the Majority Ought to Pass as Amended Report was **NOT ACCEPTED** and later today assigned. (Roll Call Requested)

HOUSE DIVIDED REPORT - Majority (8) **Ought to Pass as Amended by Committee Amendment "A" (H-107)** - Minority (5) **Ought Not to Pass** - Committee on **LABOR** on Bill "An Act To Reimburse Employees for Attorney's Fees and Costs When Forced To Pursue Petitions for Payment of Medical Services"

(H.P. 395) (L.D. 510)

TABLED - April 14, 2003 (Till Later Today) by Representative SMITH of Van Buren.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Treadwell.

Representative **TREADWELL**: Mr. Speaker, Ladies and Gentlemen of the House. I hope not to have such a protracted debate on this bill. It is very important, I think that I stand up and give you the essential facts about what is happening here. This is a trial lawyer's bill. This is another prevail trend to open the door to prevail again in the Workers' Comp System.

What this bill will do is overturn the reforms that we had in 1992. It will essentially make the worker advocate program ineffective because it is going to allow the trial lawyers to get into the system and replace the employee advocates that we have now. I don't think we need to say a whole lot more about the bill. Mr. Speaker, I request a roll call.

Representative **TREADWELL** of Carmel **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Mr. Speaker, Men and Women of the House. There is a misconception about the Workers' Compensation System and it has been brought out a couple of times today. The last time by Representative Bruno when he mentioned an employee can always go hire a lawyer to represent them in a workers' compensation case. I am going to direct your attention to Section 325 of Title 39A, which is the Workers' Compensation Act. It is on Page 67 if anyone has the statute. It states that an attorney representing an employee in a proceeding under this act may receive a fee from that client for an activity proceeding the act only as provided in this section. It goes on to say that any attorney who violates this section must forfeit any fee in the case and is liable in a court suit to pay damages to the client equal two times the fee charged to that client. The statute goes on to define how an employee's attorney can be paid. The maximum attorney fees prescribed by the board in a case tried to completion may not exceed 30 percent of the benefits accrued after deducting reasonable expenses occurring and so forth. The board may rule and allow attorney's fees to be increased above or below that minimum or that maximum specified on the rule. I submit to you that the board never has.

What the section says is that in a case of lost time and employee can hire an attorney to take that case and try it to completion. At the close of that case, if the employee wins his lost time, then the employee's attorney can then charge a fee equal to 30 percent of the benefits accrued. Two hundred dollars a week, he might collect \$1,000, that attorney can charge \$300 for the prosecution of that case, plus his out of pocket expenses. That is a case that involves lost time. There is another big hole in this system. That is medical bills. The denial of medical bills does not involve benefits accrued. If the only dispute in the case is the payment for a total knee or the payment for prescription medication and the insurance carrier is simply refusing to pay

those bills, the employee, the injured worker cannot go hire an attorney. An attorney cannot take that case. If an attorney does take that case and charges an hourly fee to litigate that, he is subject to civil trial for damages as prescribed by statute. Unless an injured employee has a lot of lost time that he is claiming, there is no source of money to pay an injured worker's attorney. It is just that simple. The carriers know that as well as you do. The carriers know that there is no downside risk for allowing an adjuster to simply deny a medical bill for no reason other than the fact that they don't want to pay it. There is an incentive to do that because they know if that medical treatment isn't necessary and if the claimant can find an orthopedic surgeon who will give him a total knee, that \$25,000 for a \$35,000 medical bill will be paid by Medicaid. In other words, it will be paid by everybody in this room, instead of being paid by the workers' compensation insurance carrier.

If the insurance adjusters decided that they don't think this injured worker really ought to be on pain medications, I am going to stop paying for his prescriptions. He can do that with no downside risks and he can do that because he knows that the injured worker may end up taking his spouse's medication or buying medication on his spouse's health insurance or putting it on his own health insurance or going without. There is no downside risk to an insurance adjuster denying a medical bill under this act. The employee cannot go hire a lawyer to take that on because the lawyer can't get paid. The only thing the employee can do is go to a worker advocate and try to push it through the system. Payments for medical bills, disputes over pure medical bills when people are out of work and losing money and having no disability pay fall to the bottom of the priority pile, perhaps rightfully so.

Those injured workers are being denied medical treatment based on the decision made by an insurance adjuster. What this bill says is that if this matter gets to formal hearing and the hearing officer determines that it was denied by that insurance adjuster without any reasonable cause, then the hearing officer can award a penalty and a penalty would be the employee's attorney's fees and costs.

I represent to you that this preventative measure will not be invoked. Any reasonable attorney representing an insurance company when they get that file will simply send the employee out to see their own doctors or get a medical opinion that says he doesn't need a total knee, he only needs an arthroscopic procedure or get a medical doctor to say that he doesn't need expensive prescription medication, he can make it on Advil. That is reasonable grounds to dispute the claim. The penalty never gets called into play. I am telling you that this bill was brought to me at the request of a hearing officer because he got sick and tired of seeing injured workers going without medical treatment for no valid reason. An insurance carrier and an insurance adjuster would dispute the claim on the good chance that the claim will go away because the medical treatment will be covered by health insurance or the medical treatment will be covered by Medicaid or the employee will simply give up because he can't get any help prosecuting that claim.

They will do that without medical evidence to the contrary. The term reasonable is a legal term of art that has been with us in time and in memoriam. It is not a difficult process for anybody to decide what is reasonable. It is certainly not difficult for a hearing officer to decide that a medical bill being denied with no medical evidence to support that denial is unreasonable. In those limited few cases, the hearing officer can then go on to make a finding and award a penalty. I represent to you, as I said, that those penalties will be few and far between and there is not an attorney I know who will take on a case representing an

injured worker based on the promise that he might get paid at the end of it based on the lack of reasonable medical evidence. By the time the case gets into formal litigation, either the medical bills will be paid voluntarily as they should have been to begin with or their will be good reason for denying them.

This only comes into play when there is no good reason to deny a claim. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative McKenney.

Representative **MCKENNEY**: Mr. Speaker, Ladies and Gentlemen of the House. As I look around this chamber or at least when I looked around earlier today, I saw a lot of faces that I recognized as people actually being employers, people who know what it is to meet a payroll and actually create a job. In some of those heads I noticed a little gray. Surely you must remember back in the early '90s when your insurance company came to you and told you they were going to cancel your workers' comp policy. They were moving out of state because it was no longer profitable to be here. That was a crisis. Make no mistake about it. We had a crisis. We had to fix the system and fixing that system involved a lot of pain. We had to create a whole new insurance company from scratch. Employers paid surcharges for years and millions of dollars to capitalize this new insurance company. We were successful in fixing that problem. You heard earlier today in other debates that insurance companies have started to come back into the state. Now they are back in here full force and that is because we fixed the problem.

One of the major fixes of that problem was to take attorneys out of the equation. When attorneys were in the equation there was no incentive to settle cases. They dragged on and on and on for more billable hours for the firm. We are now being asked to put attorneys back into the picture. We realized a while ago that there was a problem and we created worker advocates. We have added to the worker advocate ranks right along. They have been working. We need to give them a chance to work. I don't think we need attorneys back into this system. Pushing the red button would be the right one to do today. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative **WATSON**: Mr. Speaker, Ladies and Gentlemen of the House. This body did indeed react to a crisis 10 years ago. It took its cue from Shakespeare and decided the way to handle the problem was to kill the lawyers. Unfortunately you only killed 50 percent of the lawyers. You killed the employee lawyers. There are still defense attorneys on 100 percent of these cases being litigated. You can't blame this crisis on lawyers nor can you say that a bill like this that would be limited to medical bills denied for no grounds, let alone no grounds, is going to make a flood of lawyers back into the system. I suggest to you that this is a reasonable bill. It provides a disincentive for insurance carriers to unreasonably deny claims. It allows them to deny claims that they feel legally justified to do so and will only result in a savings to employers rather than a cost. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

Representative **SMITH**: Mr. Speaker, Ladies and Gentlemen of the House. I would respond to say as Representative Watson said, lawyers have not been driven out of the system. There are now lawyers with great experience in workers' compensation who do strictly insurance defense work. They are representing their insurers before mediation. They are at mediation. They are there at hearings. There is an extra added bonus. If an employee happens to have suffered two injuries, now he has two defense insurance attorneys against him on his one claim. They

are not out of the system. They are still there thriving and doing well. What this bill looks to do is not bring more work for lawyers, it looks to eliminate it. First of all, it is going to reduce disputes. If there is penalty such as paying an attorney fee for not having a reason to dispute a claim, then it is going to make the insurers have to develop reasons and decide whether or not they have a valid basis for dispute.

The second thing it is going to do is it is going to save the State of Maine Medicaid dollars. It is a sad fact that most of injured workers are workers whose next recourse when they are injured and they need medical care is to fall on our Medicaid system. It happens in far too many cases. Maine's Medicaid budget has been expanded every year. Part of this expansion is fueled by injured workers who should have their medical bills paid by compensation falling on the Medicaid System because you don't have to fight against an insurance company lawyer to get your medical bills paid by Medicaid. This will save the people of Maine money. This is something that should be done to make sure that the taxpayers of this whole state are not paying for the medical bills of the injured workers. It is something to try and reduce, also the disputes that should not go to hearing. It is time to start thinking about where the problems are. We have a problem here. Let's not hide from it. Let's address it. Vote this bill so you can start to do something for the people of Maine.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Duplessie.

Representative **DUPLESSIE**: Mr. Speaker, Ladies and Gentlemen of the House. Yes, we have heard that this was a crisis 10 years ago and maybe it still is a crisis. Yes, there is a crisis to injured workers currently. We hear how the system is working. Yes, it is working darn fine for the insurance companies, but not fine for the workers. In the year 2000, 43 percent of the cases at the first report of injuries were filed as notice of controversy. The insurers denied the initial claim. The employees go without. In the year 2001, that increased to 49 percent of the cases in this state that become not cases, notice of controversy filed by the insurance carrier. The employees go without. It happened to me personally. I was employed as a firefighter. At a fire I got injured. I had a cut. I went to the emergency room. Went home, it was my last night on duty, then I had my days off until I started my next shift. I had no lost time from employment, but lo and behold, I did work for the City of Portland that was self-insured, but they had a third-party administrator. The third-party administrator knocked the case. They refused to pay the medical claim. I received a notice that they were knocking the case on the 14th day. Time went on, they still did not pay the medical bill. I started receiving personal bills from the hospital that my medical claim was not paid. We played phone tag for a week or so. I told them it was not my responsibility to get in touch with the third-party administrator that handled the claims for my employer.

The next thing I know, I was getting billing notices and then I decided that time was up. I took it onto myself only because I was able to. I knew a little bit of the comp system. Many employees do not. I was able to make some phone calls and tell that insurer to pay that claim as I would be going after them for redress in other ways. They had no justification to deny that claim. Other injured workers would have been in a panic situation receiving billing notices from the hospital. It didn't bother me at all. I knew what the run was and what the scam was by the insurers. It is time that we try to fix the system for the benefit of injured workers in this state. The system is not improving. It is getting worse as we sit in this chamber today. Thank you.

The SPEAKER: The Chair recognizes the Representative from Turner, Representative Bryant-Deschenes.

Representative **BRYANT-DESCHENES**: Mr. Speaker, Ladies and Gentlemen of the House. I rise as someone who has been paying workers' compensation fees for 20 years and has never had claim and also as an attorney. The last person who worked for me who was injured at all was only out for one day and could not collect. I chose to pay her for her time in spite of the fact she didn't fall under that. I did look at page 67, which we were referred to in the workers' compensation rules. I saw a few things there that indicated to me that attorneys would be paid. The board may approve the payment of attorney's fees by the employee for services provided to the employee pursuant to this fact. The board may, by rule, allow attorney's fees to increased above or decreased below the amount specified in the rule when in the discretion of the board that action is determined to be appropriate. Thank you.

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

Representative **LERMAN**: Mr. Speaker, Men and Women of the House. I have over 300 employees. I have seen dramatic increases in workers' comp rates over the last three or four years. I will, in fact, spend over \$750,000 this year in workers' comp costs on insurance itself. There is no question there are changes that need to be made in the system. We are facing another crisis if we are not careful. I feel enactment of this legislation is a step in the right direction. It is good for agencies like mine and it is good for small business people. I really ask you to join me in voting in favor of the Majority Ought to Pass Report. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 218**

YEA - Adams, Ash, Blanchette, Bliss, Brannigan, Bull, Bunker, Canavan, Clark, Craven, Cummings, Dudley, Dunlap, Duplessie, Duprey G, Earle, Eder, Faircloth, Finch, Gagne-Friel, Gerzofsky, Goodwin, Grose, Hatch, Hutton, Jackson, Jennings, Kane, Ketterer, Koffman, Laverriere-Boucher, Lerman, Lessard, Mailhot, Makas, Marley, McGlocklin, Mills S, Norbert, Norton, O'Brien L, O'Neil, Paradis, Patrick, Pellon, Percy, Perry A, Pineau, Pingree, Piotti, Richardson J, Rines, Sampson, Simpson, Smith W, Thomas, Thompson, Twomey, Usher, Walcott, Watson, Wheeler.

NAY - Andrews, Annis, Austin, Barstow, Bennett, Berry, Berube, Bierman, Bowen, Bowles, Brown R, Browne W, Bruno, Bryant-Deschenes, Campbell, Churchill J, Clough, Collins, Cressey, Crosthwaite, Curley, Daigle, Davis, Dugay, Duprey B, Fischer, Fletcher, Glynn, Greeley, Heidrich, Honey, Hotham, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lemoine, Lewin, Lundeen, Maietta, McCormick, McGowan, McKenney, McNeil, Millett, Mills J, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Perry J, Rector, Richardson E, Richardson M, Rogers, Rosen, Saviello, Shields, Smith N, Snowe-Mello, Stone, Sukeforth, Sullivan, Sykes, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Woodbury, Young.

ABSENT - Breault, Carr, Churchill E, Courtney, Cowger, Landry, Marraché, McKee, McLaughlin, Sherman, Suslovic, Tardy, Wotton, Mr. Speaker.

Yes, 62; No, 75; Absent, 14; Excused, 0.

62 having voted in the affirmative and 75 voted in the negative, with 14 being absent, and accordingly the Majority Ought to Pass as Amended Report was **NOT ACCEPTED**.

Subsequently, the Minority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

The following items were taken up out of order by unanimous consent:

**ENACTORS**

**Acts**

An Act To Improve the State's Returnable Bottle Law and Adjust Handling Fees

(S.P. 326) (L.D. 985)

(S. "B" S-250 to C. "A" S-217)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

**ENACTORS**

**Emergency Measure**

An Act To Increase the Assessment on Workers' Compensation Insurance To Fund the Workers' Compensation Board Administrative Fund

(S.P. 21) (L.D. 35)

(S. "A" S-251 to C. "A" S-61)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 118 voted in favor of the same and 0 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

The House recessed until the Sound of the Bell.

(After Recess)

The House was called to order by the Speaker.

The following items were taken up out of order by unanimous consent:

**SENATE PAPERS**

**Non-Concurrent Matter**

An Act To Increase the Assessment on Workers' Compensation Insurance To Fund the Workers' Compensation Board Administrative Fund (EMERGENCY)

(S.P. 21) (L.D. 35)

(S. "A" S-251 to C. "A" S-61)

**PASSED TO BE ENACTED** in the House on June 4, 2003.

Came from the Senate **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-61) AS AMENDED BY SENATE AMENDMENT "B" (S-255)** thereto in **NON-CONCURRENCE**.

On motion of Representative SMITH of Van Buren, the House voted to **RECEDE AND CONCUR**.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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**PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE**

RESOLUTION, Proposing a Competing Measure under the Constitution of Maine To Create Municipal Service Districts To Reduce the Cost of Local Government, To Provide Property Tax Relief and To Increase Economic Competitiveness

(H.P. 1209) (L.D. 1629)

Sponsored by Representative LEMOINE of Old Orchard Beach. (GOVERNOR'S BILL)

Cosponsored by Senator STANLEY of Penobscot and Representatives: CLOUGH of Scarborough, FISCHER of Presque Isle, McLAUGHLIN of Cape Elizabeth, MILLS of Farmington, MILLS of Cornville, SIMPSON of Auburn, TARDY of Newport, Senator: NASS of York.

Committee on **TAXATION** suggested and ordered printed.

**REFERRED** to the Committee on **TAXATION** and ordered printed.

Sent for concurrence.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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**ENACTORS**  
**Emergency Measure**

An Act To Increase the Assessment on Workers' Compensation Insurance To Fund the Workers' Compensation Board Administrative Fund

(S.P. 21) (L.D. 35)  
(S. "B" S-255 to C. "A" S-61)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 104 voted in favor of the same and 9 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH**.

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The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative Makas who wishes to address the House on the record.

Representative **MAKAS**: Mr. Speaker, Men and Women of the House. Had I been present in voting on Roll Call 217, LD 575, I would have voted yes.

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**SENATE PAPERS**

The following Joint Order: (S.P. 584)

**ORDERED**, the House concurring, that when the House stands adjourned it does so until Monday, June 9, 2003, at 9:00 in the morning and the Senate adjourns until Monday, June 9, 2003 at 10:00 in the morning.

Came from the Senate, **READ** and **PASSED**.

**READ** and **PASSED** in concurrence.

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On motion of Representative BLISS of South Portland, the House adjourned at 3:20 p.m., until 9:00 a.m., Monday, June 9, 2003 pursuant to the Joint Order (S.P. 584).