

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME VII

SECOND REGULAR SESSION

Senate

March 10, 1992 to March 31, 1992

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HOUSE AND SENATE LEGISLATIVE SENTIMENTS

December 5, 1990 to December 1, 1992

ORDERS OF THE DAY

UNFINISHED BUSINESS

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

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

Bill "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws" (EMERGENCY) (H.P. 1783) (L.D. 2464)
 Tabled - October 1, 1992 (Till Later Today) by Representative GWADOSKY of Fairfield.
 PENDING - Reference.

Under suspension of the rules, without reference to Committee, the Bill was read twice.

Representative Clark of Millinocket, offered House Amendment "A" (H-1337) and moved its adoption.

House Amendment "A" (H-1337) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: The only thing this amendment does is, when you are out on compensation and you are ready to come back to work, your employer will not have filled your job by a replacement worker but that that job will be filled by you as an injured worker when you are able to go back to work.

It is a very simple amendment, very straightforward — all it does is take care of the injured worker so that he will have a job to return to once he is able to go back to work.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: We have started a process that may take us some time but I think we need to enter into it with a very clear understanding. We are at a brink in this state, a brink of collapse of an important system that we need to sustain the ability of our people to work and our employers to provide jobs.

We have, as a result of our collective inability to solve this problem, a menace to all the people of our state and in this last session created a commission which worked, as we are all very well aware over the summer to develop a compromise solution to the problem of Workers' Compensation. That commission also, after it had finished with its report, developed a series of amendments or corrections, if you wish to call them, to their final report.

I think we should enter into this debate this morning with a very clear understanding of what the results will be. There is a careful compromise that eventually we will be having an opportunity to vote upon. The likelihood of anything other than that compromise making it to final enactment, making it to the people who really need this legislation to pass, are very, very slim. I hope we all understand that as we proceed in this process. There may or may not

be very well intended ideas in this amendment or other amendments that perhaps will be placed before us today but the end result is what we must carefully consider.

Our people need a change in a bankrupt, broken system that they are forced to carry in their workplace, whether they are workers or people who try to provide jobs. Whether or not there is a person in this body who agrees with the compromise that has been offered is really not even the question. The question is whether we are willing to pass the compromise.....

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

Representative PINEAU: Mr. Speaker, a point of order? Pursuant to House Rule 27-A, I would like to ask for a ruling Mr. Speaker.

The SPEAKER: The point is well taken. The Chair would advise the Representative from Waldo, Representative Whitcomb, to keep his remarks only to the amendment now pending before the body.

Representative WHITCOMB: Thank you Mr. Speaker for the reminder. I would only conclude by saying that this amendment before us is not one that has been accepted or approved by the Blue Ribbon Commission. Therefore, in requesting a roll call, I also urge its rejection.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: I will be very brief, I know that we are going to have a long day and part of the evening.

We talked about cost savings and getting people back to work — how can you look at this package and not want to get the injured worker back to work? That is one reason why I put this amendment in. We want to get those people back to work on a job that they can do when they left before they got hurt. The only thing that we are asking is, yes, there has got to be a change in Workers' Compensation and yes we ought to get those individuals back to work as soon as possible and that is why I am offering this amendment.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: The Blue Ribbon Commission admitted that they didn't know this, they didn't realize this, that they were not very well informed on workers' jobs and the amendment being presented by Representative Clark addresses a great cost savings. The sooner you put people back to work, the more of a savings you are providing. Retraining of employees and reemployment is the key solution to saving money. The Blue Ribbon Commission never addressed it. They addressed cuts but never addressed the solution of savings to the employers and helping the employee.

I hope that you can support Representative Clark's amendment.

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

Representative LIPMAN: Mr. Speaker, Men and Women of the House: This amendment may have things in it that I like and it is amending a bill that has a lot of things that I don't like. However, we voted to have a Blue Ribbon Commission, we gave them a quarter of a million dollars, we asked them to do an independent study and whatever change we make, there is someone else who doesn't like that change. We

ROLL CALL NO. 445

have a balanced report from the Blue Ribbon Commission that is balancing all those interests so for that reason, I ask you not to disturb the balance and to go along with what we voted as a group. Everyone voted but three to have the Blue Ribbon Commission come in and decide what we were unable or unwilling to do. We now have their decision and whether we like it or not, we ought to vote on their bill, up or down, one way or another.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, Ladies and Gentlemen of the House: We certainly must all still vote our conscience. We never gave the Blue Ribbon Commission control over our conscience. I could no more vote to replace injured workers than I could vote to permanently replace striking workers who, after all, struck on their own volition. Nobody gets hurt on their own volition.

This is an improvement to a bill that the Blue Ribbon Commission themselves admitted needed improving.

I ask you to please support this amendment.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Members of the House: In response to what my good friend from Augusta said, what am I doing here? What am I a potted plant? I don't care what the commission did, the buck stops here and I think we have a right to question anything they did. To tell me that I should come here and be like a potted plant, I resent it.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti.

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

The question is, how much of this is already in law, the restrictions that are imposed as far as the employer is concerned? Is there any basis that some of this is already in law?

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

The Chair recognizes the Representative from Jay, Representative Pineau.

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: To answer the gentleman's question, in the current law you have two levels, you have a level of three years for employers that have over 250 people; under that, you have two years. However, the law is silent on saying, "Can you permanently replace an injured worker?" It doesn't say that. What it says is, "An injured worker can go back to work or a suitable employment has to be held for that time period but there is no guarantee that that injured worker can come back to his or her job that they were injured on. The law is silent on that."

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "A" (H-1337). Those in favor will vote yes; those opposed will vote no.

YEA - Adams, Aliberti, Bell, Boutilier, Cahill, M.; Cashman, Chonko, Clark, H.; Clark, M.; Dore, Erwin, Farnsworth, Gean, Goodridge, Hale, Handy, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kilkelly, Lemke, Lerman, Luther, Macomber, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, J.; Oliver, Paradis, J.; Pfeiffer, Pineau, Powers, Rand, Richardson, Ricker, Rydell, Simpson, Skoglund, Swazey, Tamaro, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cathcart, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dutremble, L.; Farnum, Farren, Foss, Garland, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Kerr, Kontos, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Mahany, Manning, Marsano, Marsh, Melendy, Merrill, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Rotondi, Ruhlin, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tardy, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Bailey, R.; Duffy, Duplessis, Gurney, Heesch, Hepburn, Ketterer, Kutasi, O'Dea, Paradis, P.; Paul, The Speaker.

Yes, 51; No, 87; Absent, 12; Vacant, 1; Paired, 0; Excused, 0.

51 having voted in the affirmative and 87 in the negative with 12 being absent and 1 vacant, the motion did not prevail.

Representative Erwin of Rumford offered House Amendment "B" (H-1339) and moved its adoption.

House Amendment "B" (H-1339) was read by the Clerk.

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

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: This amendment ensures that the United State Veteran who has a service-connected disability is not penalized under the Workers' Compensation Act of 1992 by that service-connected disability. It eliminates from the measure of disability any disability resulting from a service-connected condition.

Workers' Compensation law used to have, up until October of 1991, a second injury fund designed to give a financial incentive to employers to hire persons with permanent impairments of any origin. That provision was repealed in 1991. The Americans with Disabilities Act does not prohibit the proposed language. Neither current law, Title 39 nor propose Title 39-a addresses this issue.

I urge your support of this amendment.

Representative Whitcomb of Waldo requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than

one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Macomber.

Representative MACOMBER: Mr. Speaker, Men and Women of the House: I came here today fully prepared to vote for a bill that was agreed to by the majority members of this House of Representatives. Representative Lipman said something about the Blue Ribbon Commission shouldn't be disturbed and this and that but I don't believe this particular amendment ever went to the Blue Ribbon Commission if I am accurate in that. I think it is very straightforward. It simply says that if you are a veteran with a service-connected disability, that service-connected disability is not going to be counted against you when the percentages of injury in the Workers' Compensation cases is being discussed. I think it would be a slap in the face to any veteran who had been in combat and wounded and now comes back and finds out that that particular compensation that he is receiving for service-connected disability is going to be counted against him.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: I wish to thank the good gentleman from South Portland for speaking on this issue. I think every bit of this commission report needs to be looked over very carefully.

This one situation I wish to thank the gentle lady from Rumford for presenting this amendment. This is an unfortunate situation when we ask a young man or young lady that has served their country and are unfortunate enough to be disabled as a result of that service, I don't think we should go back and say just because a few big corporations wish to show a profit that we should put them first. We should stop taking advantage of the unfortunate for the benefit of the few rich.

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

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is absolutely necessary to ensure that our veterans are treated fairly and not be discriminated against because they may have been hurt in the service of their country.

We have done little enough in the State of Maine for the veterans who were willing to lay down their lives for service to our country so I really believe that if you have any compassion for disabled veterans who would have a service-connected disability would clearly have a pre-existing condition, it would be very unfair to that veteran.

I urge your support.

The SPEAKER: The Chair recognizes the Representative from Casco, Representative Simpson.

Representative SIMPSON: Mr. Speaker, Men and Women of the House: It seems we have two competing interests here to preserve the integrity of the commission's report and to also fully discuss and possibly amend it to improve it.

I would just like to ask if it would be possible for the previous amendment and this amendment and the future ones if the people who are offering them could answer two questions, whether the commission did address the issue and if so to their knowledge, what and how did they deal with it?

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: In reference to the comments from Representative Simpson, I do not know whether this particular issue was dealt with. My sense was that the commission didn't want to make a distinction between veterans with disabilities and non-veterans with disabilities. This would provide an exclusion or an exception for a group of people, veterans with disabilities. It does not provide that same exception or exclusion for non-veterans with disabilities.

The SPEAKER: The Chair recognizes the Representative from Casco, Representative Simpson.

Representative SIMPSON: Mr. Speaker, Men and Women of the House: Maybe if I explain myself a little more — I served on the Banking and Insurance Committee for two years during the '87 reforms. We went over a lot of these issues in great detail for six weeks. I fully respect the work that the members of the Labor and Banking and Insurance Committees have put into it and I respect the work that the Blue Ribbon Commission has put into these issues but given the amount of time that we as rank-and-file caucus members have had to work on these issues, I think it is real important to know to the extent of their discussions on some of these amendments. I simply asking those two questions, (1) did they discuss it and if so, how did they address it?

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: As most of us know, the Blue Ribbon Commission met behind closed doors and the press never made a fuss about that. I have a feeling that they knew they were doing exactly what they wanted them to do.

As far as addressing these questions, I can tell you that we, the Labor Committee and the Banking and Insurance Committee, only met a few hours with them and they agreed with us on 40 amendments not knowing that they were not doing this or overlooking that. They were not well informed. They did not have enough time. They admitted themselves that they didn't have sufficient time to address all the problems.

We have a Labor and Management group that got together, were coming to a solution, they started November 1st of this last year and spent more time than the Blue Ribbon Commission and they themselves do not agree with that. These are the parties that are concerned, the employers and the employees. These are the people that we should be supporting. This Blue Ribbon Commission, in my opinion, was a set up. They met behind closed doors and that really gets my goat that the news media never, ever moaned about it, never complained about it but let us meet behind closed doors in secrecy and all heck breaks loose.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: In answer to the question of the Representative from Casco — yes, the Blue Ribbon Commission did meet and discuss this subject in public meetings. It was one of the items they carefully considered. The amendment that is before us now, if we are debating the merits of these

amendments, it would shift costs to the state from the federal government so it was considered if that is the question that was in the minds of members of the House.

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

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: You know, about a year and a half ago, this body got all up in arms about a war that was fought halfway around the world and the Transportation Committee rushed through and got a plate. All of a sudden there was a plate talking about the Persian Gulf War and now we are hearing about the effect on those veterans who went over there. I was never in the service but it seems to me that if we can get happy about pushing a plate through, we can get fired up about the Persian War and those great people who came through Bangor. We ought to be trying to do something if Representative Erwin's bill doesn't go through and that is the thing that concerns me.

If you vote against this, and I am not going to be voting for many of these but I am going to be voting for this because I remembered this House going crazy over trying to get that plate through. I also had a plate that year as well as a bunch of other legislators who had plates dealing with Iwo Jima and all that stuff praising all those people who fought in those particular battles throughout our history. If you are going to vote for those folks when those veterans come back home with all the problems they have and I heard the other night from the Chief of the Battles, Schwarzkopf, who said on the Larry King show that every single veteran who went to the Persian Gulf will have a very difficult time giving blood now because of a certain parasite that was over there. We ought to be thinking about those veterans when we are thinking about this because if you are going to affect those veterans and you are saying to yourself that this is great, they did a great job, we really went after Saddam Hussein, but when they came back hurt and we don't help them, that's an absolute shame.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: In response to the question of the good gentleman from Casco and by the statement of the good gentleman from Waldo, I have been here 8 years and don't fool yourself, power does get results. High paid lobbyists made their views known to the Blue Ribbon Commission but what representation did the disabled veterans have? Outside of the veterans' groups who have their hands full to look after both the disabled and not disabled war veterans and in this particular case, and I repeat what I said in my previous statement, it is who can shout the loudest. Again, we are going to turn around, and I don't care if we stay here all week, this report was given to us to make a decision and the day that I am asked to put a rubber stamp on that commission, you will see me go out that door and I will never come back again. I am too old for that. I have been around the horn too many times. Let's not fool each other, let's not take advantage of the unfortunate to satisfy others.

Representative Erwin of Rumford was granted permission to speak a third time.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: I just want to briefly

respond to a comment made by Representative Whitcomb of Waldo with regard to the cost. There is a fiscal note on this. It says, "This amendment may reduce the amount of savings resulting from the bill's changes to Workers' Compensation benefits. The effect on the estimated savings to the state and local units of government as employers cannot be estimated at this time." So, we can't put a dollar figure on it and I don't think we should put a dollar figure on it.

I urge your support.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: This particular amendment and what it is supposed to do was discussed very briefly in one of the meetings with Senator Hathaway and those other members of that commission.

This is a cost shift from the federal to the state program under this amendment. I can't tell you what amount of money (and I don't think anybody has tried to get an actuarial figure as to what amount of money) would be saved or charged to the system with this amendment. However, it is a doubled-edged sword, one of the problems the commission had to address was a discrimination, and the very real discrimination, that injured people said they had in getting jobs. People who were hiring were considering pre-existing conditions in determining whether or not they were going to give that person a job. This eliminates or helps eliminate that type — this amendment does not, it is counter to what the Act does in helping to eliminate that type of discrimination. Veterans are a very dear group of people in this country who have served beyond most anyone else in numerous ways but the system that has been crafted is intended to have balance to it. This amendment is just a small niche in undoing the balance that is trying to help everybody on both sides with the least harm to any one group.

I would urge you not to support this amendment.

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

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

I would like to know, if we are going to discount any part of a resulting disability, it can be shifting a cost. As far as determining the percentage of disability, it is not a factor. Since it is not factored in, there shouldn't be any costs. How does the cost come in and how does the shift come in?

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

The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House: I find myself a little remiss sitting in my seat not speaking being a Vietnam veteran and letting this bill go through without saying anything.

The only thing we are looking at here today is to cover the ones who have been injured in combat so it won't be reflected in the workplace.

I think Representative Erwin put a straightforward amendment forth for us to vote on this morning. I disagree with a lot of my colleagues here today that we should only be looking at the report as it came forward and not look at some of the

amendments to clarify and take care of the bill. That is one reason I am speaking in favor of the amendment and I hope you all vote with us so we can get on with the rest of the bill.

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "B" (H-1339). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 446

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Constantine, Cote, Daggett, DiPietro, Dore, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gray, Hale, Handy, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Kilkelly, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Norton, Nutting, O'Gara, Oliver, Paradis, J.; Pfeiffer, Pineau, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tamaro, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Coles, Crowley, Donnelly, Farnum, Farren, Foss, Garland, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Nadeau, Nash, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pines, Plourde, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Simonds, Small, Spear, Stevens, A.; Stevenson, Tupper, Whitcomb.

ABSENT - Duffy, Duplessis, Gurney, Hepburn, Ketterer, Merrill, O'Dea, Paul.

Yes, 84; No, 58; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

84 having voted in the affirmative and 58 in the negative with 8 being absent and 1 vacant, House Amendment "B" (H-1339) was adopted.

Representative Michaud of East Millinocket offered House Amendment "E" (H-1342) and moved its adoption.

House Amendment "E" (H-1342) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Ladies and Gentlemen of the House: This is a technical amendment. What it does is it allows an orderly transition from the Workers' Compensation Board language. I think it is important because between now and when an Executive Director is appointed, there is going to have to be contracts, leases, personal actions that are going to be necessary on the day-to-day operation of the new state agency.

This amendment allows the current chair to serve as the Executive Director until a successor is appointed by the Board. This amendment does not restrict the Board's authority, however, but it allows the Board the necessary time to advertise and recruit a top-notch candidate to fill the Executive Director's post. So, this is just to fill in the

interim until the time when they do have an Executive Director. It does not mandate that the Board has to continue with that person, they can hire whoever they want to so I hope that you will approve House Amendment "E."

Representative Whitcomb requested a roll call.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I apologize to my colleague from East Millinocket. Just a brief question if I could — my understanding is that the Blue Ribbon labor/management group that is going to be put into place by November, hopefully of 1992, a Board that will be confirmed by the members of this legislature are going to have responsibility to appoint a full-time Executive Director hopefully in January of 1993 — is there anything in current law or in this bill as currently conceived that would prohibit the Labor/Management group that is put into place in November of this year from appointing the existing chair of the commission in an interim capacity between the time that they appoint a full-time chair?

The SPEAKER: The Representative from Fairfield, Representative Gwadosky, has posed a question through the Chair to the Representative from East Millinocket, Representative Michaud, who may respond if he so desires.

The Chair recognizes that Representative.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: The answer to that question is no. There is nothing that will prohibit them from doing that but between the time when that Board is set up and when this bill passes, there could be a lag time and this is just to make sure that during whatever lag that there might be, that there is someone there to run the shop. It does not prohibit them from appointing the current chair as temporary chair until they act but in case something comes up and there is a snag as far as appointing the Board or what have you, at least there will be someone in charge of running the ship.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "E" (H-1342). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 447

YEA - Adams, Aliberti, Anthony, Cahill, M.; Carroll, D.; Cathcart, Clark, H.; Clark, M.; Daggett, Erwin, Farnsworth, Gean, Goodridge, Graham, Hale, Handy, Heeschen, Hichborn, Hogle, Jacques, Jalbert, Joseph, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Mitchell, E.; Mitchell, J.; Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Simpson, Skoglund, Swazey, Tamaro, Tracy, Treat, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Cashman, Chonko, Coles, Constantine, Cote, Crowley, DiPietro, Donnelly, Dore, Dutremble, L.; Farnum, Farren, Foss, Garland, Gould, R. A.; Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Holt, Hussey, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Michael, Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tardy, Townsend, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Duffy, Duplessis, Gurney, Hepburn, Ketterer, O'Dea, Paul.

Yes, 55; No, 88; Absent, 7; Vacant, 1; Paired, 0; Excused, 0.

55 having voted in the affirmative and 88 in the negative with 7 being absent and 1 vacant, the motion did not prevail.

Representative Paradis of Frenchville offered House Amendment "F" (H-1343) and moved its adoption.

House Amendment "F" (H-1343) was read by the Clerk and adopted.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative PARADIS: Mr. Speaker, Men and Women of the House: We don't live in a perfect world and there are few absolutes in life. This would take an absolute and give the Board some flexibility so they would not unfairly cut off total benefits in appropriate circumstances. For example, if an injured employee worked in Portland and his wife had a serious illness such as cancer and needed help available there and the only place in the entire state that had work for the worker was Frenchville, the Board would have the flexibility to say that this was not reasonable to require this person to leave his wife and accept a position in Frenchville. The reverse is true. We live in an incredibly large geographical state and we are really placing undue burden on our employees so I respectfully urge your support for this.

Representative Whitcomb of Waldo requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "F" (H-1343). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 448

YEA - Adams, Anthony, Bell, Cahill, M.; Clark, H.; Dore, Farnsworth, Goodridge, Graham, Handy, Heeschen, Hichborn, Hogle, Holt, Jacques, Lemke, Lerman, Luther, Mahany, Martin, H.; McHenry, McKeen,

Michaud, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Powers, Rand, Richardson, Rotondi, Rydell, Saint Onge, Simpson, Skoglund, Swazey, Tamaro, Tracy, Treat, Wentworth.

NAY - Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Chonko, Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dutremble, L.; Erwin, Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Gray, Greenlaw, Gwadosky, Hale, Hanley, Hastings, Heino, Hichens, Hussey, Jalbert, Joseph, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Macomber, Manning, Marsano, Marsh, Melendy, Merrill, Michael, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevenson, Strout, Tardy, Townsend, Tupper, Vigue, Waterman, Whitcomb, The Speaker.

ABSENT - Aikman, Duffy, Duplessis, Gurney, Hepburn, Ketterer, Murphy, O'Dea, Paul, Stevens, P..

Yes, 41; No, 99; Absent, 10; Vacant, 1; Paired, 0; Excused, 0.

41 having voted in the affirmative and 99 in the negative with 10 being absent and 1 vacant, the motion did not prevail.

Representative Ruhlin of Brewer offered House Amendment "G" (H-1344) and moved its adoption.

House Amendment "G" (H-1344) was read by the Clerk.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: This particular amendment addresses what I believe is an oversight on the part of the Blue Ribbon Commission report. One of the very few parts of the Workers' Compensation laws in the State of Maine that worked effectively is our new rehabilitation section that was put in about three years ago. In that, the evaluation of suitability for rehabilitation is presently paid by the employer. Then from that step they go on through a planned preparation and implementation.

The Report called for the planned implementation and preparation to be paid for through the Rehab Fund as it presently is. However, it omitted paying for the evaluation. Well, if you want people to get into a rehabilitation plan to get them back to work speedily to reduce the cost to the system, you have to have them evaluated for suitability. Therefore, it is important that we address that particular problem and continue the existing rehabilitation program that calls for the employer or the employer's representative to pay for that evaluation to assure that the system continues ongoing.

The second part of this particular amendment addresses if an employee refuses rehabilitation suitable to them, then they lose their benefits but they cannot lose those benefits that cause total incapacity nor should they, and I believe absolutely that it was a typo, if they have lost a finger or a toe, that's what is in Section 3 of 2112 which this amendment addresses, that they should not lose the benefit you get from a finger that is already lost or an eye that is already lost and so forth. I believe

sincerely that that was an oversight and this amendment attempts to address that oversight.

Representative Whitcomb requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "G" (H-1344). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 449

YEA - Adams, Aliberti, Anthony, Cahill, M.; Cathcart, Chonko, Clark, H.; Clark, M.; Farnsworth, Goodridge, Hale, Handy, Heeschen, Hichborn, Hوجلund, Holt, Jacques, Jalbert, Lemke, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, J.; Paradis, P.; Pineau, Rand, Ruhlin, Saint Onge, Sheltra, Simpson, Skoglund, Stevens, P.; Swazey, Tammaro, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Dutremble, L.; Erwin, Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Hussey, Jalbert, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Melendy, Merrill, Michael, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Rydell, Salisbury, Savage, Simonds, Small, Spear, Stevens, A.; Stevenson, Strout, Tardy, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Duffy, Duplessis, Gurney, Hepburn, Ketterer, Marsh, O'Dea, Paul, Powers, Richardson, The Speaker.

Yes, 45; No, 94; Absent, 11; Vacant, 1; Paired, 0; Excused, 0.

45 having voted in the affirmative and 94 in the negative with 11 being absent and 1 vacant, the motion did not prevail.

Representative Tracy of Rome offered House Amendment "H" (H-1346) and moved its adoption.

House Amendment "H" (H-1346) was read by the Clerk.

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

Representative TRACY: Mr. Speaker, Men and Women of the House: This simply amends the provision governing the family medical leave to provide protection for employees who have a work-related injury.

I ask for the adoption of the amendment.

Representative Whitcomb of Waldo requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the

expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "H" (H-1346). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 450

YEA - Adams, Cahill, M.; Clark, H.; Clark, M.; Daggett, Erwin, Farnsworth, Goodridge, Handy, Heeschen, Hichborn, Hوجلund, Holt, Jacques, Joseph, Lemke, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, J.; O'Dea, Oliver, Paradis, J.; Paradis, P.; Pineau, Rand, Richardson, Saint Onge, Skoglund, Swazey, Tammaro, Tracy, Treat, Wentworth.

NAY - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Chonko, Coles, Constantine, Cote, Crowley, DiPietro, Donnelly, Dore, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hale, Hanley, Hastings, Heino, Hichens, Hussey, Jalbert, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Melendy, Merrill, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tardy, Townsend, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Duffy, Duplessis, Gurney, Hepburn, Ketterer, Marsh, Paul, Powers, The Speaker.

Yes, 40; No, 101; Absent, 9; Vacant, 1; Paired, 0; Excused, 0.

40 having voted in the affirmative and 101 in the negative with 9 being absent and 1 vacant, the motion did not prevail.

Representative Pineau of Jay offered House Amendment "I" (H-1353) and moved its adoption.

House Amendment "I" (H-1353) was read by the Clerk.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: It's kind of interesting that I am standing in front of you again this morning on Workers' Compensation. Gee, what a surprise!

In our deliberations last summer during the state shutdown, one of the big hangups, one of the big points of contention was the burden of proof on the IME, supposedly called the "Super Doc Concept." In reading the final draft of the Blue Ribbon Commission's Report which came from their consultant, Mr. Lewis, the burden of proof that the IME is to use is clear and convincing. Now my attorney friends here in the body and attorney friends outside the body all know that you have basically four types of burden of proof. You have mere preponderance, you have substantial evidence, you have clear and

convincing and you have beyond reasonable doubt. This clear and convincing language to the part that I am trying to amend, trying to take out and put in substantial evidence, is the real serious part. In 1990, a Florida court case dealing with IME's, the Florida court ruled that clear and convincing was unconstitutional. If I could quote the court, "because the standard is an extraordinary, stringent standard and to some degree use fact finding, the court finds the constitutionality deficient on both due process and access to court grounds."

My real problem with this part is the due process part, we are all here trying to fix a program and I am afraid what we might do is actually vent part of our free society, a person's right to due process. This clear and convincing language was a real stickler last summer as you remember my stand on the final package. If you really sit down and think, when you limit someone's due process, especially an injured worker, someone who doesn't have the means to get the attorney, and once you have the attorney, you have to have this high level and my fear is, what is going to be next? Are we going to have to prove beyond a reasonable doubt without the due process of it? Very few, in fact you can list them on one hand, states that have gone to clear and convincing evidence. Those that have gone to clear and convincing, there are cases where constitutionality questions are put in, the decisions aren't back yet, and I think what we would be doing by saying substantial evidence, we are still getting the IME, that he has to have a lot more weight to decide one way than the other but yet what we do is we take out the constitutionality question of this part. The IME is a very important part to what the Blue Ribbon Commission has set up here and I hate to think that if the constitutionality question comes back to this part and is answered, yes this is unconstitutional, the ramifications that will have through the whole bill. You can't say that it is a technical amendment because it is lowering the standard of proof but I think it is only right in this proceeding and I maintain that members of this body should feel the same that this burden is what we need and that is the sufficient burden, substantial evidence to get the job done from the IME.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: It is my understanding that the Blue Ribbon Commission did look at this in comparison to a nationwide basis and apparently is not in the Blue Ribbon Commission report. Therefore, I ask rejection of this amendment and would ask for a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "I" (H-1353). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 451

YE A - Adams, Aliberti, Anthony, Bell, Cahill, M.; Carroll, D.; Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Cote, Daggett, Dore, Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gwadosky, Hale, Handy, Heesch, Hichborn, Hognlund, Holt, Hussey, Jacques, Jalbert, Joseph, Kontos, Larrivee, Lemke, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Nadeau, Nutting, O'Dea, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Poulin, Rand, Richardson, Ricker, Rotondi, Rydell, Saint Onge, Simpson, Skoglund, Stevens, P.; Swazey, Tamaro, Townsend, Tracy, Treat, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Cashman, Constantine, Crowley, DiPietro, Donnelly, Dutremble, L.; Farnum, Farren, Foss, Garland, Gray, Greenlaw, Hanley, Hastings, Heino, Hichens, Kerr, Kilkelly, Kutasi, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Morrison, Murphy, Nash, Norton, O'Gara, Ott, Parent, Pendexter, Pendleton, Plourde, Pouliot, Reed, G.; Reed, W.; Richards, Ruhlin, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevenson, Strout, Tardy, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Duffy, Duplessis, Gurney, Hepburn, Ketterer, Paul, Pines, Powers.

Yes, 70; No, 72; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

70 having voted in the affirmative and 72 in the negative with 8 being absent and 1 vacant, the motion did not prevail.

Representative McHenry of Madawaska offered House Amendment "J" (H-1354) and moved its adoption.

House Amendment "J" (H-1354) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: This amendment allows small businesses that have five or fewer employees to elect not to participate in the Workers' Compensation system if that employer maintains liability and medical payment insurance coverage. This is modeled after the farm bill that we passed for the small farmers. I am presenting this because we have been working on Workers' Comp. since 1985. In 1987, 1991, I kept telling you people we increased the rates 200 percent since 1987, 200 percent and every time we reform, we have cut benefits down for the employee, down to 50 percent. Today we are paying 200 percent for 50 percent of the coverage we had in 1987. My small employers are sick and tired, they want to get out from under this system. This system does not work and it is not the Blue Ribbon Commission's report that is going to help. We as legislators are supposed to be representing our people and we are hiding behind the Blue Ribbon Commission and I do not like it and the majority of the people out there will not be fooled in believing that you are doing right by them by voting for the Blue Ribbon Commission's report. If it is going to go through, at least I want to protect my small employers and the employees. You say that this is crazy because Ed McHenry is supposed to be representing the employees - I am representing the employees. If this piece of

trash, in my opinion, goes through, the employees have no protection because those injured employees cannot afford to hire an attorney. At least this us be fair to our small employers and allow them not to pay these ridiculous premiums that they are paying today. Allow the small business people to go another route which will cost them less money. I assure you it is a scenario that can happen where an employee gets hurt today, under the system that we have and especially that system that is being proposed today, he goes to the hospital, had this bill with the amendment that I am proposing go through, the employer pays the medical payments. He goes to see the employee at the hospital and says, "I will go see your family and help you." You know, it is a different psychological thing for the employee, the mentality of the employee is different. He is ready and raring to go back to work but the system that we have is controversial, they contest everything they can, they pay the least they can and the insurance lawyers are the ones that are always contesting, it is not the employee's attorney.

I have been in this business of legislating for 18 years out of 20 and I have dealt with Workers' Comp. for 18 years and I do believe that I know a little bit of what is going on. This is not my favorite amendment but if this bill, which we are going to hide behind and is going to pass, at least I want to make it so that the small business people do have a chance out there.

We have greater problems facing this state than Workers' Compensation but those who manipulate the press, who use the press and tell them where to go and where to look, are very good at it. We have a \$1 billion dollar deficit facing this state, which is a heck of a lot more important to your rank and file constituents than this Workers' Compensation bill. I assure you of that. If it is such a drastic deficit that we are going to be facing, why is it that we are not being called to address that problem? I am afraid that this is not the solution. Again, you can look in the records forever and ever and when there was a cut in benefits, I have always asked what is the premium cut we are going to get? What is the rate of decrease that we are going to get from the Superintendent of Insurance and we dance around it, we go around it, but the employer premiums go up, the employee benefits go down and we go back to our employers and employees and say, "We did the best we could." That is a big B.S..

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

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

The question I would pose to anyone in this chamber who is familiar with the section of the law — currently, our Workers' Comp. law does provide an exemption for agriculture if their employees number under a certain number. Under the bill, we have reenacted that, I believe it is under six and I guess as one legislator, I am curious how that actually works for the agricultural community so that I can make some judgment about it would work for small business?

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

The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I have not heard of any farmer, and I stated when that bill was passed that these farmers were liable and they were set up so they could be sued, but I have not heard of one farmer who has been brought to court.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: In response to the question from the good Representative from Vassalboro, I do have some experience with that part of the law.

I can tell you that adopting at this point in time would raise some major liability questions and also some major risk questions.

It is not an exemption that does not exist without some complications. The difference I think between what this amendment attempts to do without a great deal of further discussion is expose workers to risk conditions without the kind of financial assets to which they would have the opportunity to go after should they be hurt and not receive fair protection as they are treated or as they are returned to work or perhaps not returned to work.

One of the reasons that I believe the law works the way that it does with the agricultural exemption is, frankly, most people with agricultural operations have huge financial investments with very little cash. There is a very mutual reason behind why there is a very fair treatment of the individuals involved who are now attempting to greatly expand this exemption to situations where there may not be those kinds of assets at risk (if you want to be perfectly honest) the equation that has been worked out between the agricultural employer and the employee. I can tell you that there have also been experiences where it has not worked out to the mutual benefit of the two parties involved. In and of itself it may be an excellent idea. We are attempting to insert it into a vacuum at this point in time and I think we may expose some people that do not wish to be exposed to some risks, both from the employer and employee point of view.

I urge the rejection of this amendment and ask for a roll call.

The SPEAKER: The Chair recognizes the Representative from Greenville, Representative Gould.

Representative GOULD: Mr. Speaker, Ladies and Gentlemen of the House: I really hate to prolong this discussion but we are talking about a very serious matter. We are talking about people being protected through Workers' Compensation which I know a little bit about, not having been protected because I couldn't afford it. We are talking about people's jobs which I know a little bit about because I am going home soon as this session is over and fire four people. I don't say that with any threat, I don't say that with great joy, I say it with very sad feelings. I called home last night and my wife said, "Guess what we got in the mail today?" I said, "What did we get in the mail today?" She said, "We have a bill from Hanover Insurance for \$1,044 readjustment on your Workers' Compensation for last year." That made me feel extremely good since I know that next week I'll get a bill for \$2,700 for Workers' Compensation, add the two together and you are taking care of all my profits. I can't really see much sense in keeping going if I can't make a profit. I can go out half crippled as I am, take my old skidder which is about as old as I am, and make more money

all by myself working in the woods than I can by hiring four people and putting them to work.

We have heard a lot of rhetoric here and we are going to hear a lot more but you are looking at, right now, one of the most frustrated people that could ever exist in the State of Maine. I was a little bit nasty to my friend, Representative Carroll, this morning and he wondered what was wrong with me and I told him that I had just run into this problem and I had to go back and apologize to him again. It is so frustrating to want to work, to want to put people to work, to want to protect them, to want to take care of them and we can't do it. The government of the State of Maine seems to be incapable of taking care of the people of the state and I am so frustrated, I just don't know what to do except I know that I cannot continue to exist as an employer. Maybe what Representative McHenry has offered will help. I certainly would like to give it a shot. Is there a risk? There sure is, but there is going to be a risk to those poor people who aren't going to work anymore too.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Dore.

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: I think it is a cold day in a certain place when Representative Whitcomb and I agree on something, even when we were on the Taxation Committee together. I think we have reached that cold day.

I looked at this amendment, I don't know a lot about Workers' Compensation and I am amazed to find myself even talking about it but almost business in Maine is small business and I think what the good Representative was trying to say to you is that it is like taking almost every small business in Maine out of the Workers' Compensation system.

Among the problems that the Workers' Comp. system has is that self-insurers are out of the loop. The thing that I learned about insurance in the last few years is that insurance is shared risk. If you reduce the pool of people sharing in the risk, it will not work for anyone.

I would, with much amazement, suggest at this time that you go on defeat this amendment.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: My reason for proposing this amendment is exactly like Representative Gould has stated. I have some small business people that hired two, three employees and they have fired them for the simple reason that Workers' Compensation has gone out of sight. They cannot afford it, they now work for themselves.

To say that we are destroying the base, so be it, because the base will never improve. The system that we are setting up here is that the employers are going to pay through the nose and the employee will never receive benefits.

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

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

It is my understanding that under Workers' Compensation law an injured worker gives up his common law right to sue. If a small employer opts out of the system, does that small employer also become liable to suit by the injured employee? In

other words, is he giving up his protection under the Workers' Compensation law?

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

The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: That is correct, they are open to suit.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Anthony.

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: I am fascinated by this amendment because I think it may in fact offer some hope for small employers. The Workers' Compensation system was developed in the early parts of this Century in response to an overly litigious system that was in place with a series of rules that said that an injured worker, when they sued the company, often lost because in fact the company then claimed that the liability really was not the company's but that of the fellow employee. Injured workers lost again and again and there was much litigation and it didn't seem to be very productive.

Now, the theory behind Workers' Compensation was that all of that would be smoothed over by creating a system that was basically administrative in nature and would run relatively smoothly and the product would bear the burden of the injuries that occurred along the way. That system has run amuck really badly. We all know that. One part of the way it has run amuck is it has become so complex and so fraught with litigation that it costs a huge amount of money and the result is that the insurance rates go up. The complexity of controlling the insurance company is also a source obviously of some of the difficulties here. It seems to me to try to allow to the small employer to get out of that system, as long as you have adequate liability insurance to protect against the liability that you would be taking on, makes good sense. If it works in agriculture — I recognize that there are risks, there are risks for employers, heavy risks, and there are risks for employees but it seems to me to get give small employers the option to do it the other way makes good sense to me.

I am going to be supporting this amendment. It seems like an idea worth trying out and seeing if that can't be a way of solving this mess. The system is far too complex and especially for the small employer.

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

Representative LIPMAN: Mr. Speaker, Men and Women of the House: This particular amendment raises a new and different approach, although we have discussed it before in the Labor Committee. I think we ought to look at what we are going to be doing if we pass this amendment. One, I think there would be some savings attributed to it because you are removing from the insurance pool probably the high risk industries, a lot of the small ones. On the other hand, you are going to recognize that the employees are losing their common law defenses. That means you are going to have employees that are not going to be able to recover when they receive severe injuries. Our current Workers' Comp. system, whether we like it or not, is a no-fault system and you are

going to be cutting out a lot of employees from coverage if you pass this particular amendment.

Another thing that really concerns me is if you are going to pass this or we are going to do that, is \$100,000 enough per employee if you end up with someone getting killed or you end up with someone being permanently disabled? If it isn't enough, are we going to make the business be responsible for the full amount?

I think that this is a new, different approach and if you are going to do it, you can't do it in a simplistic way.

I commend the sponsor, I think there is a lot of merit to it. I think this can end up with saving money but I see some real great concerns if we pass it the way it is. I urge you to vote against it.

Representative McHenry of Madawaska was granted permission to address the House a third time.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I am very surprised at the good Representative from Augusta for his statement saying that this amendment would do away with common law. It is giving back to the employee the right to sue, it is not doing away with it. If you are under Workers' Compensation, you do give away your common right to sue. This amendment allows the small business a choice of going under that system. I assure you that practically all my small business people are good human beings that will look out for the employees. They wish to get out from Workers' Compensation.

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

Representative RYDELL: Mr. Speaker, Men and Women of the House: I looked at this amendment very carefully because I too have begun to feel that we ought to look at some alternatives for our smallest employers in this state. However, I am disturbed by the fact that the employer would only have to maintain medical payment coverage of not less than \$1,000. It doesn't take very much of an injury for a medical payment to be more than \$1,000. We can hardly have a couple of physician visits and a few tests and certainly you can't even get inside a hospital for 24 hours without it costing \$1,000.

I think that what would happen under this amendment is that we would force employees who actually have quite minor injuries to have to resort to suing their employers in order to get reimbursement for those injuries.

I agree that we need to look more carefully at the system for our smallest employers but I think we probably have to do that at another time in another place and that this amendment will not accomplish what the sponsor really wants to accomplish and will tie up our court system with a lot of cases that really are very minor injuries or we will force our employees to have to somehow find the means to pay for those minor injuries. I am afraid that we would be doing a disservice to both our employers and employees if we support this amendment as it is currently written.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Mr. Speaker, Ladies and Gentlemen of the House: I think everyone agrees that our current system does not work. Most people agree that this legislature and perhaps previous ones have been incapable of truly fixing it. If this amendment is good for small business, then perhaps we should

look at extending it to all business by doing away with Workers' Compensation.

The SPEAKER: The Chair recognizes the Representative from Casco, Representative Simpson.

Representative SIMPSON: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

As I understand it, if you replace Workers' Compensation with liability (which I don't believe most businesses are required to have to buy but may carry) and a worker was injured, would that injured worker have to prove negligence on the part of the employer in order to have the right to sue because many injuries are not the fault of either the employer or the employee and that seems to be what we established in 1913 with the Federal Workers' Compensation Act?

My second question is, does federal law, besides requiring that the states offer a program, mandate that they have to have it? Would this exemption actually preempt it in any way?

The SPEAKER: Representative Simpson of Casco has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Augusta, Representative Lipman.

Representative LIPMAN: Mr. Speaker, Men and Women of the House: The answer to your question is they do need to prove negligence if this passes. That is why I said before that there could be a real downfall on the part of employees who were unable to prove the negligence, they wouldn't have any coverage. I don't know the answer to the question about the federal law.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, Ladies and Gentlemen of the House: We are talking about adults here. Usually adults own businesses, this is a choice.

I hear my friends from the other side always talking about getting government off people's backs. There are dangerous small business but there are also small businesses that have never had a claim and are never going to have one. I think of a florist shop at home who could certainly save money if they did not have to pay Workers' Compensation which goes up and up and they get nothing for it because they have never collected. I am going to support this.

Representative McHenry of Madawaska was granted permission to address the House a fourth time.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: Representative Rydell has stated that \$1,000 is not enough. If you are a business person, you are going to make sure that you are covered properly. I believe that most business people know what they need to cover medical costs for their employees. \$1,000 is minimum. If they wish to have \$100,000, that is their business and they know what their accident rates are, they know what they would have to pay. I have to believe that at least my business people know what they are doing, they know what they will be facing. I hope you can support this amendment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than

one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "J" (H-1354).

Pursuant to Joint Rule 10 and House Rule 19, the Representative from Eagle Lake, Representative Martin, was excused from voting.

The SPEAKER: The pending question before the House is adoption of House Amendment "J" (H-1354). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 452

YEA - Anthony, Bell, Boutilier, Cathcart, DiPietro, Duffy, Erwin, Gean, Goodridge, Gould, R. A.; Graham, Gray, Hale, Hichborn, Holt, Jacques, Jalbert, Joseph, Ketterer, Kilkelly, Kutasi, Lemke, Luther, Macomber, Mahany, Martin, H.; McHenry, Michael, Morrison, Nutting, O'Dea, Oliver, Paradis, J.; Parent, Poulin, Reed, W.; Richardson, Ricker, Rotondi, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tammaro, Tardy, Tracy.

NAY - Adams, Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Cahill, M.; Carleton, Carroll, D.; Carroll, J.; Cashman, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, Donnelly, Dore, Duplessis, Dutremble, L.; Farnsworth, Farnum, Farren, Foss, Garland, Greenlaw, Gwadosky, Handy, Hanley, Hastings, Heeschen, Heino, Hichens, Hoglund, Hussey, Kerr, Kontos, Larrivee, Lawrence, Lebowitz, Lerman, Libby, Lipman, Look, Lord, MacBride, Manning, Marsh, McKeen, Melendy, Merrill, Michaud, Mitchell, E.; Mitchell, J.; Murphy, Nadeau, Nash, Norton, O'Gara, Ott, Paradis, P.; Pendexter, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Pouliot, Rand, Reed, G.; Richards, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevenson, Townsend, Treat, Tupper, Vigue, Waterman, Wentworth, Whitcomb.

ABSENT - Gurney, Hepburn, Marsano, Paul, Powers.

EXCUSED - The Speaker.

Yes, 47; No, 97; Absent, 5; Vacant, 1; Paired, 0; Excused, 1.

47 having voted in the affirmative and 97 in the negative with 5 being absent, 1 vacant and 1 excused, the motion did not prevail.

Representative Rand of Portland offered House Amendment "K" (H-1355) and moved its adoption.

House Amendment "K" (H-1355) was read by the Clerk.

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

Representative RAND: Mr. Speaker, Men and Women of the House: I agree with the sentiments presented by some of the Representatives here today who say that the Blue Ribbon Commission should be adopted with just an up or down vote with no amendments added. However, I do believe that the Blue Ribbon Commission came out with two very, very important, very positive proposals. The first proposal is that the Workers' Compensation System in the State of Maine be turned over and put under the management of Management and Labor. I think that is a very positive move and we will all benefit by that.

The second very positive proposal put forth by the Blue Ribbon Commission was the establishment of

an employer-owned mutual insurance company. My amendment speaks to that insurance company. Many of the people who are supportive of the formation of this company have grave reservations as to the viability, the survival of this new organization.

The mutual company will not be allowed to be a part of the guarantee fund which every other insurance company that writes any kind of insurance in the State of Maine must be a part of. My amendment would repeal a section of the law as proposed in the Blue Ribbon Commission that exempts the Maine Employer's Mutual Insurance Company from participating, joining or contributing financially to the protection of any plan, pool, association or guarantee or insolvency fund, since this provision is such an aberration of Maine law and every other insurance company must be assessed and be a part of the guaranteed fund which protects in case of an insolvency of an insurance company, protects the employers and the employees who have purchased comp from that company. The guarantee fund then pitches in and pays of the debts that the insolvent insurance company has.

Since that is mandated for every other insurance company that writes in the State of Maine, my question to the Blue Ribbon Commission when they came before Banking and Insurance was, why this exemption? Why are we treating the employer-owned mutual company any differently in such a very important way than we treat any other insurance company that writes in the State of Maine?

To be quite honest with you, I got no answer from the four commissioners. I did get a response from Dick Johnson from the Bureau of Insurance. His response was, because of the way the mutual company is proposed with the provisions that are proposed under the Blue Ribbon Commission, there was a fear that other private insurers would not write comp in the State of Maine because they felt the mutual company was probably not set on firm enough ground and would fail.

I believe that some of the reasons for that are that the private insurance industry as proposed by the Blue Ribbon Commission is to be deregulated as of January 1, 1993. Most of us have no problem with the deregulation of that.

The Maine Mutual Employer's Insurance Company will then be able to write Workers' Compensation in this state. That will be formed and supposedly up and running by that time.

By deregulating the private insurance market, they no longer will have to take part in the shared risks that they now do through the high risk pool or through the assigned risk pool as we call it. All of those risks, all of them, every one of them, is automatically transferred to the Maine Employer-Owned Mutual Insurance Company. The deregulated, private insurance companies can then pick and choose the companies that they wish to offer Workers' Compensation policies to. As good practical business people, they are going to pick the high premium companies with good safety records. That leaves the small premium and high risk companies for the Maine Employer-Owned Mutual Insurance Company.

Even with these setbacks, I am convinced that if given enough time, the mutual company will be able to compete. When we asked experts in mutual companies who have worked with mutual companies in other states — when we asked them to tell us how we could expect a mutual company that has all the risks (all the

risks) and none of the ability to cherry pick or cream off the top like the private industry, how could we expect to compete? The answer was, expert servicing which is what provides for workplace safety and excellent case management from day one of an injury. On those two levels, basically, with those two provisions in place, we can compete — we, as a mutual company can compete and compete very well with the private insurance industry.

My question which was not answered by the commission was, if everybody is so convinced that all the other rules and regulations that are in place for this mutual company are so good and if everybody is convinced that 92 percent of the small business in this state is going to be successful with their own mutual company, then please think about why they are not mandating like every other insurance company is mandated, why they are not mandating, they are specifically saying in Part III, section 3703 of the proposal, paragraph 2, "The mutual company and its policy holders are exempt from participation and may not join or contribute financially to, nor be entitled to the protection of any plan, pool, association of guarantee or insolvency fund authorized or required by this title." I assure you that if we want to protect small business, we should pass my amendment. It does not add cost to the system by one penny, it just gives the Maine Employer's Mutual Company the exact same protection should it become insolvent as every other insurance company that writes in this state.

I urge you to please support this amendment. If this Blue Ribbon Commission passes with that exclusion in there, we today will be responsible for putting every single business that is going to be put into the Employer's Mutual Insurance Company at risk, at great risk.

When I asked what happens should this company fail, the insurance company become insolvent, I was told that the assets of the policy holders were then going to have to be used to cover claims. That is every little store, every little business that you can think of, will have to be put on the block to cover the deficit should this company become insolvent.

If everybody is so sure that this plan is going to work, then let's put our money where our mouth is and make this company put it on the same level playing field as every other insurance company that writes in the State of Maine. Remove that exclusion as my amendment would do so this Employer's Mutual Company will be treated and granted the opportunity to be assessed and join the guarantee fund and receive the same type of protection for its policy holders as every other insurance company.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: I applaud Representative Rand for bringing to our discussion one of the most important pieces of the bill that is before us today. I also know that discussing of the Maine Mutual Fund probably is the single thing that you are least interested in and in fact most people leave and go to sleep when we are discussing insurance issues. I implore you not to do that because nothing affects your employers and the workers more than a solvent Workers' Compensation system.

I oppose the amendment Representative Rand has

offered and that is very difficult to do because no one has worked harder to try to make this work than Representative Rand, so we share the goal of trying to make the Maine Mutual Company work. As a matter of fact, this body endorsed the concept of the Maine Mutual Company and our reforms of last year. We have wanted to do this for a very long time.

Where we part company is as I look at how this new company is set up, it is not like any other insurance company in Maine except if you compare it to group self-insurance. It is not a company like other companies. It is group self-insurance. As you recall from reading the bill and from discussions that we have had in the past initially — and you need to remember these figures — earlier on before we came back to the session, I sent to everybody in this body, Republican and Democrat alike, an informational sheet about the current situation in our insurance market. Forty percent of the businesses in our state have individual and group self-insurance coverage. The voluntary market in the State of Maine serves only 6 percent. This is so outrageously broken that we must consider the importance of having a competitive voluntary market and we must put together this company and put the insurance system on the way to having options for our employers.

Finally, 54 percent of our businesses or what is currently called the residual market, which means they are not big enough to self-insure, which means that they cannot go to Hanover or anybody else and buy insurance, nobody will sell them anything. Frankly, that is a lot of the people that you represent.

If this bill passes unchanged, all of those people will automatically be in the new company as of January 1st or with the language, sometime early in January. They will be divided into divisions and they are modeled on group self-insurance with the whole point being that they are accountable and responsible for safety in the workplace, getting people back to work and they can see the results of their work. They can see rates that are directly related to how they behave toward injuries in the workplace. All the premiums come from the businesses as group self-insurance, they pay premiums based on what they have to pay out. It is run by the employers and the employees are represented as well. If they don't have adequate premiums in a division to pay for the claims that occurred that year, they must go back and yes, the employers pay. That is the way group self-insurance works. They have no incentive to over-reserve because it is their money. They have every incentive to reserve properly so they won't come out with a sudden assessment that they can't afford and that they didn't anticipate. It is group self-insurance.

I think probably where we have split company is that my vision of the Maine Mutual Company, and I may be the only person in this body who sees it like this, I do not see it as a company that may be around forever. I see it as a weigh station on this very broken track we are on. We are standing on a cliff and someone has held out a shoestring for me to hold onto. Yes, I prefer a rope but I have this shoestring. There are risks but I am willing to take that risk because I think it offers more accessible, more responsible, kind of coverage to our small businesses so they can take control of their destiny.

What I would like to see happen because of our

actions on this bill is that the voluntary market would become healthy and they would become competitive. I mentioned this last night to some of you that when the Bureau of Insurance sets rates, those are maximum rates. Any insurance company who wants to, none of them have, could go right now and take anybody they want to out of this residual market by offering a lower rate. They have chosen not to do so. So, deregulation isn't going to change anything in terms of cherry picking, they could do that now if they wanted to. My hope is that some day we have a healthy voluntary market and that anybody who wants to self-insure and can group together or individually can do so. In fact, our committee has worked very hard to make it easy to self-insure. We have changed nothing there. Those are options for businesses. Ultimately, maybe everybody will get out of this new company and that is okay with me too. I am fully aware that if that happens at that time, we will have to revisit it and those people who really are in the very high risk pool will either be able to pay those premiums or if they are so careless forever, maybe they shouldn't stay in business if they are hurting people in a negligent kind of way. We will have to go back and look at that but at this point that pool is so big, the risks are spread so broadly, that it is the only hope we have of moving forward to an insurance market that has voluntary self-insurance and something to take care of our small businesses who can't get either one of those.

So, it is with great regret that I must oppose my very, very learned colleague on the Banking and Insurance Committee but I believe that putting on the amendment that she has offered will basically kill any chance of reviving the voluntary market.

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

Representative RAND: Mr. Speaker, Men and Women of the House: Much of what my good friend, Representative Mitchell has said is absolutely true, but there are a couple of problems with how she has presented them. She is absolutely correct that the private insurers can write in the voluntary market today and can pull anybody out of this pool, the residual pool, that they want to.

As I sated before, they are astute business people and they are in this for profit which is all well and good. It just stands to reason that it is extremely profitable for the insurance industry to have 92 percent of us in the assigned risk pool or we wouldn't be there. The reason being that because they are assigned the businesses under the provisions of being in the assigned risk pool, companies are assigned businesses to write policies for, neither party voluntarily goes into this. That means they are allowed, right off the top, what was 26 percent, for servicing. That is before any business costs are accrued, before they look at anything to do with benefits or anything else. That is clear profit right off the top for servicing.

Now, that 26 percent we found out during the last Workers' Compensation debate should have been money well spent, should have been money that reduced workplace injuries. In fact, we heard hour after hour of testimony by the day actually that these companies were not servicing, that this 26 percent right off the top which is allowed is not being used. It is very profitable, very beneficial for the voluntary insurance writers to have us all in the pool or, believe me, we wouldn't be there. There is

absolutely nothing to prevent them from writing a business with an excellent safety record. There is nothing that prevents them except that the policy amount might be too small for them to consider servicing that company properly. Of course we all know, we can all agree that there has been no case management from day one of injury, it has just not happened in the State of Maine.

The self-insurers on the other hand are doing exactly that because they own the product, they own the whole ball of wax. They are checking the workplaces for safety and they are returning the workers to work just as soon as possible. Those are the cost savings in Workers' Compensation and I think we all agree to that.

The other little piece that my good friend, Representative Mitchell left out was that the self-insurers also have a guarantee fund, they are also assessed. This would be the only company, if you want to look at it as a self-insurance group, this would be the only type of company in the State of Maine that deals with this type of insurance that doesn't have a guaranteed fund. My question is, if we have enough faith in this mutual company (and I personally do) I think that it can work, but by mandating the same thing for this insurance company that we mandate for everyone else and the self-insured, we are backing up our belief that this can work. When we don't have that guarantee there, we are leaving small business hanging right out on a limb.

Now, if you in good conscience think you can do that, I suppose you can reject this amendment, but it is not a cost to the system. The reason the Blue Ribbon Commission put this exemption in, they could not tell me themselves, they did not answer, but sitting at the same table with them at the time, I asked the question and Dick Johnson from the Bureau of Insurance could only give me his idea. His idea was that the voluntary market would not come back into the State of Maine because they feared the mutual company may fail and they didn't want it part of the guarantee fund that they would then have to help make up the deficit should that occur.

If we have faith in this bill, if we have faith in the two very good provisions of the Blue Ribbon Commission, Labor/Management Board running the comp system and the other extremely important piece, the mutual company, which I am 100 percent in support of, let's treat this company like every other one and every other group of self-insured.

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

Representative LERMAN: Mr. Speaker, Ladies and Gentlemen of the House: I rise because I, too, asked the same similar question to the Blue Ribbon Commission about insolvency. I hate to stand and go against my good chair because I know she has got her heart in the right place, but I have to go along with Representative Rand. There are some very deep concerns about the solvency of a mutual fund. First let me preface that I, too, am very supportive of this new Maine Employee Mutual Fund. I think it is probably the best thing that we could do for the State of Maine and the employers of the State of Maine.

There are some deep concerns. Think about the horror shows that we have gone through for the last few years. One of the reasons we have this horror show is because we had a real serious problem with

the premiums and the rates that kept going up and up. Why did that happen? It is because we have a problem in this country called asbestos and because of that we had to put a 2 percent tax, which is a 2 percent increase in Workers' Compensation across-the-board. Every single one of us has had to pay for that through your property and casualty, through all of your insurance plans that you had. That has hurt us. Now there will be no guarantee fund, there will be no way to come back and pick up the loss if there is a loss.

If my good friend from the other side of the aisle tend to smile and laugh because this is not a serious problem, it is a serious problem. I agree 100 percent with Representative Rand because I think she has explained it very articulately, those are very serious problems with the system. We need to protect those employers and the only way we can do that is to do what she is doing in this amendment.

I would urge you to please support her amendment.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: The reason the commission did not change the law, as the Representative from Portland would suggest, is because it was considered in a great extent and it was felt that it would prevent the insurance companies from coming back.

If this amendment is adopted, it will raise the cost to employers 2 percent, those same employers who do not have the benefit of being able to go into self-insurance. It is a cost that was considered, it is an amendment that was considered.

I urge its rejection and I request a roll call.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative McKeen.

Representative MCKEEN: Mr. Speaker, Men and Women of the House: I hope the so-called party of business will stop and reconsider their position. I agree that this is a type of self-insurance for smaller employers. People who have low premiums or high risks or whatever and the reason is that they are in this market, but it is not a choice. If they want to stay in business, this is the only place they can get it. If they want to stay in business without this amendment, they open themselves up to unlimited liability. If, and I hope to heaven it doesn't fail, but if it should, homes, cars, everything could be taken from these small business people. They have absolute unlimited liability. This 2 percent fee will protect them from that. Every insurance company in this state, self-insurer, they all have this protection. If you want to put your small business people, the people who own the store on the corner or whatever, if you want to put them into bankruptcy, this is the way to do it. If we don't have this, we are sending out the wrong message. We are sending out a message that we expect it to fail. Let's not do that. Let's pass this amendment, insure, take care of these people. We can't just leave them out on a limb.

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

Representative RYDELL: Mr. Speaker, Men and Women of the House: I think it is no secret to most people in this House that my preference in solving the Workers' Compensation problem in our state would be to create a state fund. However, that is not in this bill today and it is not before this body. This is an extremely complicated issue. We are creating

what is called the Maine Employer's Mutual Insurance Company. I think it is a misnomer. It is not a mutual insurance company as Representative Mitchell has stated. It is something entirely different and its purpose as it is created in the current proposal is entirely different.

On a theoretical basis, insurance risk should be spread across the broadest group and everyone should share in the total risk. I agree with Representative Rand that any mutual insurance company should be part of a guarantee fund. But, after carefully considering all the material, I now realize that we can't make the change, just this change, in the current proposal before us. If we wish to create a mutual insurance company, then we would have to revamp and rewrite that entire section of the Blue Ribbon Commission's proposal and the bill that is before us.

What we are doing in the bill before us is creating a different assigned risk pool. We are revamping, reworking and trying to improve the assigned risk pool. That pool is what would become the Maine Employer's Mutual Insurance Company, a form of group self-insurance. And, it would include all of the high risk employers, not just the small employers who have good risk and who have perhaps had no claims. We all have constituents who are small business owners who have had no claims and are part of the present assigned risk pool because they cannot purchase insurance in the voluntary market. What we are doing in this bill is creating a mechanism to divide our current assigned risk pool into different categories. One category would be a high risk pool. There would be, I believe, a total of eight industry or geographic divisions and a high risk division. We would have within this entity those employers who are causing tremendous problems with their lack of a good safety record, with their high cost. We would also have sections of those small employers with good records who, because of the failure of our current market, cannot purchase insurance in the open market, in the voluntary market. Each one of these divisions would have its own board of governors and rates would be set independently within the division with assessments and dividends permissible depending upon the experience in that particular division. If we were to, without making any other changes, just include this self-insurance pool, this total pool in the guarantee fund, we would be asking those employers who are now in the voluntary market and those employers who we hope will be in the voluntary market in the upcoming years, we would be asking them to again, as they are now, share in the very poor risk of those employers who have the high costs. This is extremely complicated and, in a way, what we are doing is going against the basic concept of insurance and keeping this group out of the guarantee fund in the way that the current law proposes setting up this particular pool.

I remind you again this is a revamping of the high risk pool that we currently have. What we would hope is that those employers or I gather the intent of the Blue Ribbon Commission is that those employers with good safety records would be offered the opportunity to purchase insurance in the voluntary market. I don't know that that will happen, you don't know that that will happen. There are no guarantees. If it doesn't happen, then we may have to truly set up the kind of mutual insurance company that I believe Representative Rand wants to set up

and would support and that I too would support.

At this point though, if we do nothing but require that this company, which is really not a company in the usual sense be part of the guarantee fund, we would again be asking those employers with a good safety record to bear the cost of employers with poor safety records.

I think we have to very carefully evaluate the entire Maine Employer's Mutual concept. We may decide we want to revamp that concept but we would have to do it in a total sense. We would have to rework that part of the bill and there would be other changes that would be required. I urge you not to make this change unilaterally.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative McKeen.

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

To Representative Rydell, you stated that the insurance industry would be responsible for making up the debt, wouldn't that only be true if the Mutual Fund should fail?

The SPEAKER: Representative McKeen of Windham has posed a question through the Chair to Representative Rydell of Brunswick who may respond if she so desires.

The Chair recognizes that Representative.

Representative RYDELL: Mr. Speaker, Men and Women of the House: If the insurance company failed, then they would have to go to the guarantee fund. However, the small employers who would be in this fund would be required to have that assessment in order to go to the guarantee fund so that, on an ongoing basis, they were paying that and, frankly, the way it is set up now, I believe if we give it a chance to allow those employers who would be in the high risk pool for a short period of time, let them pay their own assessments, let them be independent of the other division and let us see how that works. I believe that we will then be offering the best chance for the small employers to allow their rates to pay only for their safety record.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative McKeen.

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

We need this legislation to allow anyone to join the guarantee fund, in my understanding. We can't simply say part of the mutual fund can join? My understanding of what she just said was that the high risk employers could join.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "K" (H-1355). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 453

YEA - Adams, Aliberti, Cahill, M.; Chonko, Clark, H.; Duffy, Erwin, Handy, Heesch, Hoglund, Holt,

Jacques, Ketterer, Lemke, Lerman, Luther, Macomber, Martin, H.; McHenry, McKeen, Michaud, Oliver, Paradis, J.; Rand, Rotondi, Ruhlin, Swazey, Wentworth.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Farnsworth, Farnum, Farren, Foss, Garland, Gean, Goodridge, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hale, Hanley, Hastings, Heino, Hichborn, Hichens, Hussey, Jalbert, Joseph, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Mahany, Manning, Marsano, Marsh, Melendy, Merrill, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Dea, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tammaro, Tardy, Townsend, Tracy, Treat, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Gurney, Hepburn, Paul, Powers, The Speaker.

Yes, 28; No, 117; Absent, 5; Vacant, 1; Paired, 0; Excused, 0.

28 having voted in the affirmative and 117 in the negative, with 5 being absent and 1 vacant, the motion did not prevail.

Representative Lemke of Westbrook offered House Amendment "L" (H-1357) and moved its adoption.

House Amendment "L" (H-1357) was read by the Clerk.

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

Representative LEMKE: Mr. Speaker, Ladies and Gentlemen of the House: This amendment seeks to rectify what I consider perhaps the most unnecessary and heartless provision in this so-called reform bill. The issue is not terribly complicated. Quite simply, it deals with death benefits to dependents of workers killed on the job.

There are two categories. One involves the benefits, educational benefits, extended. Under current law, those benefits are extended through the post-secondary education of the child. In other words, to age 23. What the Blue Ribbon Commission report would do, it would chop that off at age 18 and, therefore, would effectively deny educational opportunities to a number of potential students who by gaining that education would contribute to an educated work force and to the economic growth of the State of Maine.

Secondly, this involves the benefits extended to dependents who are mentally or physically incapacitated from earning. Under present law, that goes beyond age 18. Under the proposed reform, those benefits also would be shut off at age 18.

This is an issue which I feel quite strongly about personally as an educator, as someone who has tried to educate our young people in the State of Maine for the last 20 years. I can tell you from personal experience that it is not easy for a lot of those kids to get into school as far as post-secondary education, either in the public colleges or the private schools that I happen to

teach in or in the technical colleges. I will not support and cannot support a chopping off aid to these kids. I think it is the most egregious gratuitous element in this bill.

So, I am appealing to you, not on the basis of pro-business or pro-labor or Republican or Democrat, because I really don't see it in that context. This is simply a matter of what you feel in your hearts is right or wrong in terms of the kids of those workers who die on the job.

I ask you to vote on this on the basis of, if you will, simple decency.

I will try to anticipate that the Representative from Waldo who I am sure will hop up and say something about the cost, the cost, the cost — you will note on the fiscal note where the amendment deals with benefits to veterans that this amendment may reduce the amount of saving. We don't know. From what I have heard, the amount, if there is any, is very negligible. I think in balance with what is involved here, we can risk that.

I urge you to vote for this amendment.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: I apologize to the good Representative who just spoke that it will be I and not the Representative from Waldo who will talk about cost, cost, cost in this matter but that is the way in which it will be addressed.

Representative Whitcomb is not able to be here at this moment but I am interested in pointing out to the House that this issue was addressed by the Blue Ribbon Commission and is addressed in its amendment which will be before the House shortly, I hope.

The amendment, with respect to cost in this are even larger — this amendment produces costs which are even larger than those in the Michigan bill but the problem is that this will hurt the economic package which has been crafted and put together, hopefully, for the adoption of this legislature. I would urge the House to vote against it.

Mr. Speaker, when the vote is taken, I request the yeas and nays.

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

Representative LEMKE: Mr. Speaker, Men and Women of the House: I appreciate the Representative from Belfast filling in for the Representative from Waldo in their assigned role.

I would be interested in the data upon which the assertion was made about the potential or horrendous cost. Yes, it was addressed by the Blue Ribbon Commission. No, I am not satisfied with what I have heard from them that would support voting against this particular amendment. I would like in detail an explanation of how this would be so injurious to the State of Maine.

The SPEAKER: Representative Lemke of Westbrook has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Men and Women of the House: I do not have a response to that question and I think it is a fair question to ask.

I do have another question I would like to ask at this time. I am trying to, like everyone else, shuffle bills and amendments back and forth to find out certain provisions. There was a provision in

this bill that speaks to the payment of compensation to any dependent child after the expiration of the 500 week period, ceases when the child reaches age 18. If, at the age of 18 years of age, the child is neither physically nor mentally incapacitated from earning — my question is that there may be, and I stand corrected, part of your amendment may already be in the bill on page 52 of the existing document. I don't know if that is precisely the same section or not. That was my question. I didn't want to be duplicating that component and if that is the case, we may have to readjust the amendment you proposed which I do not find inherently as a bad amendment but I just wanted clarification.

The SPEAKER: Representative Gwadosky of Fairfield has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Rand.

Representative RAND: Mr. Speaker, Men and Women of the House: I am getting confused now. I know that when the Blue Ribbon Commission Report first came out, all benefits to all spouses and dependent children ceased after ten years. When I brought this up to them when they were before our committee, I asked them about dependent children to at least allowing them to reach the age of 18. They agreed to that change.

The other part (I think) of Representative Lemke's concern are handled under present Maine law which the Commission has adopted. It is on Page 6 of the bill and it is the definition of dependent. I believe included in this definition are those children who are mentally handicapped, those who are in a school, college or university operated or directly supported by the U.S., state or local government or political subdivision. I think if you look on Page 6 and read the definitions — if I understand what Representative Lemke wants in his amendment, I think that it is already taken care of in the bill.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: Again, in answer to the question, which I understand has been raised by Representative Lemke and now answered by Representative Rand, I believe the answer is correct. If you look to the definition of dependent, it is presumed automatically that the definition of a dependent includes those people with disabilities and so forth and are full-time students. In continues beyond so I believe in this instance this would be duplicative and all I can say is, the Blue Ribbon Commission did try to address it in their amendment and I believe that that satisfactorily should answer the concern of the good Representative.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, a point of parliamentary inquiry?

As I understand where we are at this point that if there was a motion to table this amendment that it would in fact table the entire bill?

The SPEAKER: The Chair would answer in the affirmative.

Representative GWADOSKY: Given that, would it be possible for the Representative from Westbrook, Representative Lemke, to withdraw his amendment at

this time so we could clarify this point and then move on at that point with a new amendment?

The SPEAKER The Chair would answer in the affirmative.

Subsequently, Representative Lemke of Westbrook withdrew House Amendment "L" (H-1357).

Representative Cathcart of Orono offered House Amendment "M" (H-1360) and moved its adoption.

House Amendment "M" (H-1360) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cathcart.

Representative CATHCART: Mr. Speaker, Men and Women of the House: House Amendment "M" deals with the issue of mediation in these cases and there are two provisions. The first simply allows the Board to pass rules so they could bypass or waive mediation in cases where mediation is not appropriate or necessary. I would see that as some cost savings and certainly it would avoid some delays when no mediation is needed.

The second part of the amendment allows the mediator, let me quote from the amendment, "If the claim appears to have substantial merit, the mediator has the power to order interim benefits for the employee until a formal hearing can be held." It makes it very accountable. However, it allows the board to go after the employee to recover these benefits if the case is finally denied, so it would not be a loss of money as I see it.

The other benefit that I see from this amendment is that it would give a means for an employee to obtain benefits quickly so that that employee and his or her family would not just have to go to the town for general assistance, thereby costing more to the property tax.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: This is another one of those amendments which will have a significant cost impact on the system which is contemplated by the bill and by the amendments of House Amendment "C." One of the problems is that it reintroduces many of the kinds of difficulties that exist with a system which is a prisoner to administration. The opportunities for awards which are not based upon the system as it is proposed to adopt it create great difficulties for it.

I urge the House to vote against this amendment and when the vote is taken, Mr. Speaker, I request the yeas and nays.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative O'Gara.

Representative O'GARA: Mr. Speaker, I would like to pose a question through the Chair to any member who would care to answer.

Just from my impression and my interpretation of the discretion of this Board, doesn't the Board already have this discretion? Isn't that already implied?

The SPEAKER: Representative O'Gara of Westbrook has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Orono, Representative Cathcart.

Representative CATHCART: Mr. Speaker, Men and Women of the House: I will attempt to answer the question. Unfortunately, I have lost the page in the bill where this section is located but I did read it

earlier this morning. As I understand it now and, someone can correct me if I am wrong, the bill requires mediation to take place. It is mandated and the Board is not given the discretion to waive or bypass mediation.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Anthony.

Representative ANTHONY: Mr. Speaker, Ladies and Gentlemen of the House: I rise somewhat reluctantly to oppose this amendment, particularly the second part of it. I think that the strength of this — I have a lot of reservations about this Workers' Comp bill in general — but the strength of it is to convert from a litigated system to a system centered around mediation. Mediation can work well only if it is true mediation, it seems to me. What this does is give the mediator the power of a fact finder which I am afraid would transform that mediation to something which is not really mediation, which doesn't give the parties an opportunity to advance positions freely without fear of the consequences because, after all, it is a totally consensual activity, but rather makes them perhaps hesitant to set forth some ideas because the mediator becomes a potential fact finder, a person who can make a decision which is adverse to their own position that they are advancing and makes them perhaps more reluctant to say things which they might otherwise say.

So, I am going to vote against this particular amendment.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

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

What happens in a case where the mediator makes a mistake in law or in judgment or a terrible mistake, what recourse does the employer or employee have?

The SPEAKER: Representative McHenry of Madawaska has posed a question through the Chair to any member who may respond if they so desire.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "M" (H-1360). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 454

YEA - Adams, Cathcart, Clark, H.; Duffy, Erwin, Handy, Heeschen, Hoglund, Holt, Jacques, Lerman, Luther, Mahany, Martin, H.; McHenry, McKeen, Michaud, O'Dea, Oliver, Rand, Rotondi, Stevens, P.; Tracy.

NAY - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Cahill, M.; Carleton, Carroll, D.; Carroll, J.; Cashman, Chonko, Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Farnsworth, Farnum, Farren, Foss, Garland, Gean, Goodridge, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichborn, Hussey, Jalbert,

Joseph, Kerr, Ketterer, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, MacBride, Macomber, Manning, Marsano, Marsh, Melendy, Merrill, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, J.; Paradis, P.; Parent, Pendexter, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tammaro, Tardy, Townsend, Treat, Tupper, Vigue, Waterman, Wentworth.

ABSENT - Gurney, Hale, Hepburn, Hichens, Paul, Powers, Whitcomb, The Speaker.

Yes, 23; No, 119; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

23 having voted in the affirmative and 119 in the negative with 8 being absent and 1 vacant, the motion did not prevail.

Representative Stevens of Bangor offered House Amendment "N" (H-1361) and moved its adoption.

House Amendment "N" (H-1361) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Stevens.

Representative STEVENS: Mr. Speaker, Men and Women of the House: Of all the times the Judiciary Committee has met and deliberated on Workers' Comp Commissioner appointments, no one has ever come forward to that committee and said the Workers' Comp commissioners are not fair adjudicators of the cases before them. This bill is an attempt to somehow say to the Board that the person that you hire as an adjudicator, that is the hearing officer, has to be trained and learned in the law.

All of you have struggled with reading this bill for weeks as we have been getting drafts at our homes. Have you noticed how complicated it is? Do you hear the body today arguing about burdens of proof, whether or not it is from a procedural or substantive matter, about the weight of evidence? Our Workers' Comp Commissioners presently are able to do that by training and aptitude. All this bill tries to do is to say to the Board, you may pick these people but they are going to be approved by this body in a process so that this body can weigh the ability of these people to evaluate evidence in matters of law and matters of fact. It says that.

It says also that these hearing officers do not exactly serve at the pleasure of the Board, although the Board will post their name because if an adjudicator serves at the pleasure of an appointed political board, their decisions can be influenced by that appointment and serving at that pleasure.

We have historically sheltered our adjudicators from political pressure in order to immunize them from the sort of tactics that we want them to be free from when they deliberate on their decisions. This bill is an attempt to do that.

It also does one other thing. In the present bill, the prospects of a true appeal are non-existent. If you had a decision that you felt was unfair and your choice was to appeal it to the very same hearing officer that had decided it in the first place, would you as a citizen think you were getting a fair hearing? Think about it. The person who just said yes or no, be you employer, insurance company or injured worker, that person who just said

no to you is your first choice of appeal. Now, if you are a business person and you just lost your case in your hearing officer — how do you feel? How does that business feel or how does that insurer feel? You'd say, gee, the only person I am going to be able to talk to is the same person I just talked to. What is the perspective? The perspective is the same and if it is not the same, our citizens are going to think it is the same.

What this bill does is transfer the present system of a hearing appeal before a different panel so that if you are denied something on appeal, instead of going to the same person and say, reconsider this, you get to go to a different person. That seems like a reasonable thing to me. Our citizens will perceive it as fair.

Say if you are an employer or an insurance company and this hearing officer consistently, to your perspective, has hearings or decisions that are anti-business and you know you are going to have to keep going back and going back to that same hearing officer — the public accepts the system that they think is fair, they will support a system that they think is fair. Intuitively, we all feel that the system of taking your appeal to the same person who just gave you a decision contrary to your interests is not fair.

I urge your support of this. It tries to make no systemic changes other than have the hearing officer learned in the law, a member of the Bar like the present commissioners are. Remember, nobody has ever come to this body and said the way our commissioners are educated and selected has been detrimental to their deliberative duties, their adjudicating duties, in this system.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: This amendment is one which I gather some people would think I would support because I am a lawyer and always think that people who are learned in the law can do things better than those who are not. In fact, I do not support this amendment and urge the House to vote against it.

One of the major problems with the Workers' Compensation system has been the litigation system that has been created within the litigation system. I am no stranger to litigation and no foe of it. I recognize that if a field is fairly set for a litigation battle that it is in the best interests of dispute resolution when no other system exists to resolve the dispute. I have always believed that and will continue to believe that.

I come to this legislature with a history which perhaps only a few other members of it have and that is I practiced Workers' Compensation law in the days before people were lawyers who were commissioners. I have to tell you that it worked pretty well. Now, has it been the complicating changes that the legislature has made which has brought the system which we presently have to the brink of disaster? I don't know. I assume that that is a possibility but I do know that the system worked well when decisions were being made by non-lawyers. Sometimes I disagreed with them, sometimes I thought my clients were wronged, sometimes I thought my clients got what they deserved and occasionally they were lucky to get more than they probably actually deserved under the law because of some reason that was unknown to me at the time that I made the evaluation which proved to

be wrong when they got more because the commissioner thought that they should.

The system that we presently have doesn't work. I don't blame its failure on lawyers. I think lawyers are required by the very nature of their profession to practice law. I do think that with respect to certain aspects of the system that it is sometimes better that we have people that are learned in the law but the system that we have is so bad that we need so desperately to have a different system that I am prepared to see us use one that doesn't have the litigation component continue in the same fashion in which it has hitherto existed.

As I say that, I am not without sympathy for lawyers, but I do firmly believe that lawyers are trained to make a system of laws better. If this is a good system of law for Maine people, lawyers will survive nicely, they have historically, and I think they will in the future. I think that what they will try and do is to bring their considerable skills, perhaps to this body in future years, to see if we can't refine whatever the new system is, but to refine a new system. I do not see this as a necessary adjunct of the new system at this point and I would urge the House to vote against it.

Mr. Speaker, when the vote is taken, I ask for the yeas and nays.

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

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

Is there any way in which this amendment could be divided into two parts? I do not feel that the two parts are necessarily joined together. Many people would like to vote for one part and not the other which at present is not possible in the way it has been framed.

The SPEAKER: The Chair would answer that it is not possible under our process and would require redrafting of both into two separate amendments.

The Chair recognizes the Representative from Falmouth, Representative Reed.

Representative REED: Mr. Speaker, I would like to pose a question to either the sponsor or anyone who is able to answer. It appears to me that there is a difference between the amendment that we have and the section of the bill and I ask specifically the amendment appears to delete all of section 5 of paragraph 152, a component of which would provide discretion to the Board to contract for hearing officers or employ them. The amendment seems to delete that and it would appear to me it would then require only employment for six-year terms of full-time hearing officers. I would request someone to explain to me if that is in fact the case of why that is good to remove that contracting opportunity.

The SPEAKER: Representative Reed of Falmouth has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Bangor, Representative Stevens.

Representative STEVENS: Mr. Speaker, Men and Women of the House: It was my intent in the bill to have the Board have the authority to hire on a consulting basis as well as to hire on an employment basis, commissioners. The only standard would be that these hearing officers would be learned in the law. It would be my intent that they could have hearing officers learned in the law, approved by the

body that were hired on a consulting basis by the Board as needed so that they would have that flexibility. They might have two or three times as many hearing officers as they needed that they could call on an interim necessary emergency basis. I did not mean to exclude that section of where they could hire them on a consulting basis. If I did, I would be very willing to correct that. That was not my intent. My intent was to establish the standard for hiring a hearing officer.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "N" (H-1361). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 455

YEA - Adams, Aliberti, Cathcart, Clark, H.; Cote, Duffy, Farnsworth, Goodridge, Hale, Handy, Holt, Ketterer, Lerman, Mahany, Martin, H.; McHenry, McKeen, Michaud, Mitchell, J.; O'Dea, Oliver, Stevens, P.; Townsend, Treat.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Cahill, M.; Carleton, Carroll, D.; Carroll, J.; Chonko, Clark, M.; Coles, Constantine, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Erwin, Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heeschen, Heino, Hichborn, Hichens, Hognlund, Hussey, Jacques, Jalbert, Joseph, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Lemke, Libby, Lipman, Look, Lord, Luther, MacBride, Macomber, Manning, Marsano, Marsh, Melendy, Merrill, Michael, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, J.; Paradis, P.; Pendexter, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Poulin, Pouliot, Rand, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Swazey, Tammaro, Tardy, Tracy, Tupper, Vigue, Waterman, Wentworth, The Speaker.

ABSENT - Cashman, Gurney, Hepburn, Parent, Paul, Powers, Whitcomb.

Yes, 24; No, 119; Absent, 7; Vacant, 1; Paired, 0; Excused, 0.

24 having voted in the affirmative and 119 in the negative with 7 being absent and 1 vacant, the motion did not prevail.

By unanimous consent, all matters having been acted upon requiring Senate concurrence were ordered sent forthwith to the Senate.

Representative Duffy of Bangor offered House

Amendment "D" (H-1341) and moved its adoption.

House Amendment "D" (H-1341) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Duffy.

Representative DUFFY: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is not substantial. This amendment is a small basic change from what is written in the commission report and bill. This amendment exempts the fire fighters from the preexisting condition test in Title 39a. Simply said, I would hate to think that there would be a fire fighter who got hurt saving someone's life, trying to save someone's home, is injured, and while that is happening, they are fighting over how much of a preexisting injury caused this injury to this fire fighter and down rates his disability. It is just a basic simple change and I am sure that there isn't anyone in this state who would feel one bit badly about protecting a fire fighter from what his disability rating would be. I urge you to pass this amendment.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: The section to which this relates, Section 201, is one of the major provisions of this proposed new law which is before the House this morning. What happens so often with this process here as we work in the House is that we attempt to deal with a matter which seems good at the time but invades the concept which is before us. What we need to do is put into effect a system which does not have the little chinks. This fire fighter exemption used to exist in the old law as did many others. What we need to do is resist the impulse to do anything except to put a new clean slate into the laws of Maine. I think that it is important for us to do that and I would urge the House to reject this amendment.

Mr. Speaker, when the vote is taken, I request the yeas and nays.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I think I agree with Representative Marsano but I am not sure what he said, but I think I agree in concept. I also agree with what Representative Duffy is trying to accomplish. It is my understanding that there are provisions in law as well as in this bill that creates a rebuttal of presumption on behalf of fire fighters ensuring that the injuries are going to be caused out of a work-related injury. I believe that those are provisions in the bill currently and in existing law and in this bill which would take care of that situation.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Duffy.

Representative DUFFY: Mr. Speaker, Ladies and Gentlemen of the House: The old saying is, "If there is any doubt, throw it out." Well, the question being is that this amendment would make no doubt. This amendment is something we can do today, we can do it now and we can make sure that nothing happens to these fire fighters between now and the time someone comes up with the bright idea of how they are going to change this once again and include and revise all of the different chapters that we have

now. There is still a basic, simple exception to what we are doing today. We can do it now and we can put it in now, not next year.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: Just clarification on what Representative Gwadosky said. If I understood him correctly, he said that fire fighters were currently protected under law. My understanding is that that is only in the case of a heart attack.

The SPEAKER: The pending question before the House is adoption of House Amendment "D" (H-1341). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 456

YEA - Adams, Bell, Cahill, M.; Clark, H.; Dore, Duffy, Erwin, Farnsworth, Hale, Handy, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Ketterer, Kilkelly, Lemke, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, J.; O'Dea, Oliver, Paradis, J.; Paradis, P.; Pineau, Rand, Rotondi, Ruhlin, Saint Onge, Skoglund, Stevens, P.; Strout, Swazey, Tammaro, Tardy, Tracy.

NAY - Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Goodridge, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Kerr, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rydell, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevenson, Townsend, Treat, Tupper, Vigue, Waterman, Wentworth.

ABSENT - Anthony, Cathcart, Chonko, Clark, M.; Gurney, Hepburn, Paul, Powers, Simpson, Whitcomb, The Speaker.

Yes, 47; No, 92; Absent, 11; Vacant, 1; Paired, 0; Excused, 0.

47 having voted in the affirmative and 92 in the negative with 11 being absent and 1 vacant, the motion did not prevail.

(At Ease)

The House was called to order by the Speaker.

Representative Mitchell of Vassalboro offered House Amendment "C" (H-1340) and moved its adoption.

House Amendment "C" (H-1340) was read by the Clerk.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: House Amendment "C" incorporates all the changes that the Blue Ribbon Commission members agreed to in their extended deliberations with the committees of jurisdiction, Banking and Insurance, Labor, State and Local Government and Judiciary. The things that they agreed to clarify or to change are incorporated into House Amendment "C" and that was also verified by the OPLA staff who was the draft staff for the Blue Ribbon Commission. So, everything in "C" has been accepted by the Blue Ribbon Commission.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: I urge the adoption of House Amendment "C" and at the time the vote is taken on this amendment, I request a roll call.

Representative Michaud of East Millinocket offered House Amendment "A" (H-1345) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "A" (H-1345) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I hope you will adopt House Amendment "A" to House Amendment "C." The original language in the original bill I like much better than what the amended version does. Basically what my amendment does is it cuts the maximum benefits from \$536 per week to \$441. It also includes an annual adjustment which I think is very important. Under the amendment, House Amendment "C" that does two things. The first thing it does is cut the maximum benefit down from \$536 to \$441 but it also cuts the adjustment out. In current law, there is an adjustment. My amendment would take care of the adjustment. However, it still does cut the maximum cap down to \$441.

What we are creating here if we do not accept this amendment is we are creating a greater inequity in the system. This amendment pretty much only affects those white collar workers or paper workers, ship builders or contractors who make good wages. I might remind you since I also serve on the Credit Union Board that a lot of these people's budgets are adjusted to the money that they are earning. So, by reducing that cap and cutting off that annual adjustment, you are hurting them even more. It is not fair just because you are a paper worker or just because you work at BIW and you make good wages that you are not entitled to 66 and two-thirds of your pay whereas another individual who might work at a grocery store does not make that type of wages, they will be entitled to that 66 and two-thirds of their pay. I think this is a reasonable amendment. Although it still cuts the benefits for those individuals, I think with that annual adjustment

clause that it will soften that cut any greater than it has to be. I hope that you would adopt House Amendment "A" to House Amendment "C."

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: I do hope that the House will reject this amendment. One of the major changes that has been implemented by the Blue Ribbon Commission Report is the attempt to stabilize the actual cost which can be done in the way in which the bill is crafted through the amendment but not with this amendment. Therefore, I think that it is important that this amendment be defeated.

Mr. Speaker, when the vote on this is taken, I request the yeas and nays.

The SPEAKER: The Chair recognizes the Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I hope you do not reject this amendment. I was asked how much this amendment would really save, they could not put a figure on it. But, I will remind this body those employers that are paying this type of wages are self-insured. So, I doubt very much if your small grocery store owners will realize any particular savings under this amendment. Your self-insurers will but not your small mom and pop stores because they do not pay the type of wages that the paper industry or BIW pay.

I think this is a fair amendment. Although it still cuts benefits to those individuals, it does allow that small annual increase because without this amendment, their benefits are going to be frozen for another five or six years. That is not fair and that is not right to treat those individuals any differently than you would treat an individual who might not make that type of money. You are treating them unfairly and I would hope that you would adopt this amendment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "A" (H-1345) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 457

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Cote, Crowley, Daggett, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gurney, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kilkelly, Lemke, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; O'Dea, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Poulin, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simpson, Skoglund, Stevens, P.; Swazey, Tammaro, Tardy, Townsend, Tracy, Treat, Waterman, Wentworth, The

Speaker.

NAY - Aikman, Anderson, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Constantine, DiPietro, Donnelly, Farnum, Farren, Foss, Garland, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Kerr, Ketterer, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Look, Lord, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Plourde, Pouliot, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Simonds, Small, Spear, Stevens, A.; Stevenson, Strout, Tupper, Vigue, Whitcomb.

ABSENT - Ault, Duplessis, Hepburn, Lipman, Paul.
Yes, 77; No, 68; Absent, 5; Vacant, 1;
Paired, 0; Excused, 0.

77 having voted in the affirmative and 68 in the negative with 5 being absent and 1 vacant, House Amendment "A" (H-1345) to House Amendment "C" (H-1340) was adopted.

Representative Clark of Millinocket offered House Amendment "B" (H-1347) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "B" (H-1347) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: This amendment treats attorney fees for employees on an equal base with attorney fees for employers. The Workers' Comp Commission Board is available to resolve disputes between both parties for attorney fees and all it does is deal with attorney fees.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: This is one of those issues that has been discussed and discussed for a considerable amount of time. It is, however, not a part of the report which is what we are urging the House to adopt this afternoon. Accordingly, we would like to urge the House to reject this amendment.

When the vote is taken Mr. Speaker, I ask for the yeas and nays.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, I would like to address a question through the Chair.

What does equal basis here mean? Would somebody spell that out for me please?

The SPEAKER: Representative Mahany of Easton has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from South Portland, Representative Anthony.

Representative ANTHONY: Mr. Speaker, Men and Women of the House: I will try to answer the question. I do support this particular amendment.

The problem of attorney fees in the Workers' Comp bill as presented is that there is a cap placed on attorney fees for a claimant but there is no cap whatsoever on attorney fees for insurance companies. I recognize the difficulty in trying to put a cap on attorney fees for insurance companies but it seems to me if we are going to do anything here, we ought to have a level playing field.

I spoke earlier in support of mediation and keeping mediation pure. I think the heart of this proposal is the strengthening of a non-adversarial approach but at the same time there are those cases that don't settle through mediation and both sides should have equal access and equality of access to attorney representation. It seems to me that what this does is provide that and provide a level playing field for those cases that do go to an adversary hearing. Therefore, I support this amendment.

The SPEAKER: The pending question before the House is adoption of House Amendment "B" (H-1347) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 458

YEA - Adams, Aliberti, Anthony, Bell, Cahill, M.; Carroll, D.; Cathcart, Chonko, Clark, H.; Clark, M.; Cote, Daggett, Duffy, Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketterer, Kilkelly, Kontos, Larrivee, Lemke, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; O'Dea, Oliver, Paradis, P.; Pfeiffer, Pineau, Powers, Rand, Richardson, Rotondi, Saint Onge, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tamaro, Tardy, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Cashman, Coles, Constantine, Crowley, DiPietro, Donnelly, Dutremble, L.; Farnum, Farren, Foss, Garland, Gray, Greenlaw, Gurney, Gwadosky, Hale, Hanley, Hastings, Heino, Hichens, Kerr, Kutasi, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, J.; Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevenson, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Dore, Duplessis, Hepburn, Paul, Rydell, The Speaker.

Yes, 65; No, 79; Absent, 6; Vacant, 1;
Paired, 0; Excused, 0.

65 having voted in the affirmative and 79 in the negative with 6 being absent and 1 vacant, the motion did not prevail.

Representative McKeen of Windham offered House Amendment "C" (H-1348) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "C" (H-1348) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative McKeen.

Representative MCKEEN: Mr. Speaker, Ladies and Gentlemen of the House: I offer this amendment because, in my opinion, the Blue Ribbon Commission

Report is just more of the same fragmentation that we now have in the Workers' Comp system. What we need is a whole new system, a system that interconnects with and works toward a very specific goal to cut the costs and to put these people back to work.

This amendment is the Michigan Workers' Comp System. It is not perfect but it does work and I believe that is our most important goal here, to find a system that works.

If we adopt this amendment, we must also agree to use the Michigan case law to implement the system until we have had time to establish our own case law over a period of time.

We also need to ask the Business/Labor group to stay together and expand so that we can use the same system Michigan does where no changes to the comp law come unless they are agreed to by the people most affected, business and the workers.

These are not in this amendment but we need to support that concept.

The Blue Ribbon Commission has taken parts of the Michigan law but has left out very important parts. I don't believe the parts taken will work the way they are intended. The Blue Ribbon Commission has done just what the Maine Legislature did in 1984, 1987, 1991. There have been some good ideas but the whole package is not cohesive, it does not work.

The cost of Workers' Comp in Maine is over three times the national average. The cost in Michigan is slightly over the same. It is 107 percent of the national average.

If we adopt this amendment, I believe we will give much greater savings to Maine business.

The Michigan system costs one-third of what the Maine system costs so there should be an immediate savings.

I am not an actuary and if we can get into a battle of actuaries, we could have savings of 100 percent to zero, I am sure.

There are savings in this plan. I don't believe there will be savings in the Blue Ribbon Report.

The thing that impressed me most about the Michigan system when it was presented to the legislature by the Workers' Comp group was that its main goal was safety in the work place and return to work for injured workers. The whole system is geared toward this goal. The Maine system and the Blue Ribbon Commission report say they have these goals but only parts of either plan really work toward safety and return to work. What we need is the whole system working toward that goal and no other. That is the only way costs can be cut in Workers' Comp. If there is no accident, there is no cost. If a worker is returned to work as soon as possible, there is less cost.

No matter what we do here today, we are not going to have an immediate affect on the cost of Workers' Compensation. If we were to pass a law that said no benefits will be paid from this day forth, it would not cut costs immediately. We have all these people in the system. So, let's not everyone have the television age mentality, immediate gratification, it is not here and will not be here.

I hope you will support this amendment. Mr. Speaker, I request a roll call.

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

Representative RICHARDSON: Mr. Speaker, Men and Women of the House: This amendment to the amendment

to me embodies the failure of what has happened in the past few months. In my view, the Blue Ribbon Commission has labored with input from a variety of sources and has reentered the abyss of interest group politics, narrow sectarian interests and private interests with the report that has been brought before us and in which there is an acknowledged momentum for today.

This amendment would have done what the Labor and Management group did, which was to propose something that would revolutionize and fundamentally change a bankrupt system and the bankrupt politics that surround that system.

I should say for the Record that I was the individual who had an idea of a Labor/Management group coming together about a year and a half ago as I sat in this room and listened to the horror of our attempts to deal with that issue in the first session of this legislature. The idea of course is just a simple idea but the 16 amazing men and women who put that together and found the model of the state with all of the compromises that that entailed did a magnificent job with us and the Blue Ribbon Commission thumbed its nose at that task, at the state's peril, at the working people of this state's peril, the businesses of this state's peril, at the economy of this state's peril. The idea was, if Maine could not do it and we all knew that, you find a state that could do it that was a real state with real case law, real statutory law and an economy that roughly approximated our own. You say in this instance we are not going to reinvent the wheel, we will find a system that is working.

We brought together, they brought together labor and management. They excluded lawyers, doctors, third parties, other participants who, in my view, had gummed up the process so many times before, insurance companies, should be added to that list.

The business members represented some of the largest corporations in the state, labor representatives were intimately and closely involved with the labor union movement in this state. They were an incredible group of 16 people who came together. Then they did something else, they agreed to operate by unanimity 100 percent agreement or they couldn't move. They agreed to choose one state with all the compromises, all of the difficulties that the real world presents when you try to deal with a workers' compensation system and they came up with Michigan, which has pulp and paper mills, mills that are like our own with \$2,000 per worker cost versus some of our mills that are \$6,000 per worker cost, a Michigan system that stresses mediations and worker safety. Then they went and left out some of the most fundamental distinctions that the model could present. The benefits in what we have before us in the Blue Ribbon Commission report are unbalanced. I find it absurd, almost laughable that one talked about carpal tunnel syndrome in the same way for a lawyer as one does for an assembly line worker or brain surgeon. It is absurd.

Safety, the worker safety program is an education program that are in Michigan, not here, gone. Return to work incentives, all of the things that get people back to work and restore their life which a Workers' Compensation could do in Michigan not to be here and of course with the problems with the state fund, the mutual fund and the financial disaster that we are staring at with another whole set of problems come the new year when this supposed system with all its

momentum goes into place.

I can't take any credit for what that group did in coming together, people who were involved in it directly, not people who made their living based upon the relationships of politicians and legislators but people who were in the trenches of business and labor who came together, worked on the compromise, found the model of a real world system and recommended it to a Blue Ribbon Commission. I, for one, feel badly wounded that that Blue Ribbon Commission did not capitalize on a real world model and try to find the transition and all of the localizing and case law problems and blend that into it and do the real homework of bringing a revolution to us in this area. It could have been done and it came so close. So many of us here are going to have to be forced to vote ultimately on this so-called Blue Ribbon Commission Report. I think it is a travesty. We came so close to working with a group of people who did not play God and create laws but who chose a real world situation in a real world state similar in many respects to our own and had that model in front of them but they chose to reject that for reasons that I probably could not talk about effectively here.

I think it is a tragedy, I think this amendment is the bill that should be before us, I think this is what the Blue Ribbon Commission should be working on. Frankly, I think if we could stand up to that so-called politics, we would insist on it, insist on real change and insist on real fairness.

I urge you to vote for this amendment and if there are problems with it, the new legislature can as it will inevitably have to deal with problems in the so-called momentum of the Blue Ribbon Commission come January. Let's get on with doing right for the businesses, the economy, the working people of the State of Maine.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Ladies and Gentlemen of the House: The Blue Ribbon Commission did in fact consider Michigan law and many other states. The Michigan Workers' Compensation law, complex as it is, was considered at length, discussed, and the Blue Ribbon Commission and their many consultants from all sides of the political spectrum, concluded that it would raise the cost of Maine's already terrible Worker's Compensation system. So, they went steps beyond and studied the laws of other states and incorporated many aspects of many states, including Michigan, into their plan that was initially before us.

Maine is not a Michigan. It is overly simplistic that you think you can take another state and transplant it or superimpose it on top of ours. It was suggested, the bipartisan Blue Ribbon Commission considered it thoroughly, but went a step beyond.

This, as has been clearly explained by the speakers from the other side of the aisle, does negate the work of the Blue Ribbon Commission and substitutes something else. The choice is very clear. The final thought before you make a vote on that is whether you want to raise the cost of the present terrible system. I certainly hope not and urge your rejection of the amendment before us.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

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

If the bill that we are currently working on does

become a law and not this amendment and there is supposed to be a 12 percent decrease in costs, does that mean that businesses will get a 12 percent decrease in cost? Are we not looking at an increase in cost with the bill before us?

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

The Chair recognizes the Representative from Augusta, Representative Lipman.

Representative LIPMAN: Mr. Speaker, Ladies and Gentlemen of the House: It is my understanding that Representative Luther is correct that there is a 32 percent rate increase pending and that the 12 percent savings, if it is 12 percent, will be off-set against whatever the determined rate increase would be and we would probably end up with a new increase in the cost of premiums.

The SPEAKER: The Chair recognizes the Representative from Windham, Representative McKeen.

Representative MCKEEN: Mr. Speaker, Members of the House: The question on the 12 percent savings or whatever savings is actually a moot point because the system will be deregulated and the charge can be anything they want.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

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

Am I to understand that this amendment is virtually a copy of the Labor/Management group's recommendation? That is to say, the recommendation to adopt the Michigan plan with the alternatives over the changes that they put in there? That's my first question.

If the answer to that question is yes, I would like to ask somebody with respect to the expertise that we are talking about here around all these amendments, how long did the Labor/Management group work on coming up with the recommendation of the Michigan plan and didn't they look at the plans of every other state in the Union?

The SPEAKER: The Representative from Easton, Representative Mahany, has posed a series of questions through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Windham, Representative McKeen.

Representative MCKEEN: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is the Michigan plan with slight changes. One change is that it changes the Workers' Compensation Commission to the Business Labor Board as recommended by the Blue Ribbon Commission.

Another change is that it replaces the state fund or the accident fund that they have in Michigan to the Mutual Fund as recommended by the Blue Ribbon Commission.

The Workers' Compensation group, Labor/Management group, worked on this for, and I am not positive, a year or 13 months. I know it was one or the other of those figures.

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

Representative RAND: Mr. Speaker, Ladies and Gentlemen of the House: The Labor/Management group, which is the group that I think we all agree should be running the Workers' Compensation system in the State of Maine because they are the two entities that are impacted by the Workers' Compensation system.

To further answer Representative Mahany, they did look at all the states and Michigan was the state that they chose. I think that this body actually owes a great debt to these people who did what everybody, including myself, thought was the impossible. This group of Labor/Management people put themselves together, nobody mandated it, did their own research and did not hire consultants, did pay for their own facilitator to run the meetings and did what many of us thought was impossible, they came to a unanimous agreement on one of the most hotly contested issues this state has ever seen, the Workers' Compensation system, and how to reform it. These are the very people that we are hoping to put in charge of some system come January 1st.

For the people who actually participated in this ad hoc, put themselves together group to look at Workers' Compensation, I would like to name them and have them on record because they have done an extraordinary job. The work that they have done goes beyond Workers' Compensation. We have at least 16 people from either side of the aisle, so to speak, the Labor/Management aisle, who have learned that they can sit down, negotiate, have give and take, and come to a unanimous agreement on problems that affect us in our workplace. We have other problems coming down the road. Health care is not one of the small ones that I can think of right now. It is going to be absolutely vital that we have the support and the understanding and the ability for labor and management to talk to each other in a reasonable fashion just as we are going to have to work together as Republicans and Democrats to get over a lot of these hurdles.

The people who were good enough to spend their own time and their own resources and the companies that supported them should be recognized today. They are John Bowman of Saunders Brothers; John Cannon of the Professional Firefighter's of Maine; Andy Francoeur of UPIU, Local 1069; Kenneth Goodwin, PIE, Inc.; Bob Hodges, Nichols Corp.; James Mackie of Local S-6; Mike McGovern of Cape Elizabeth; Jonathan Reitman, the Facilitator who was hired by these people; Diana White, Maine Labor Group on Health; Sara Burns, Central Maine Power Co.; Mike Cavanaugh, Amalgamated Clothing & Textile Workers Union; Kevin Gildart, Bath Iron Works; Dick Haskell, Lucas Tree Expert Co.; Ken Hutchins of Ken Hutchins, Inc.; Ned McCann, Maine AFL-CIO; Vincent O'Malley, ILA 861; and George Ward, Local 740 IAFF. These people accomplished what many, many of us thought was impossible.

I would like to keep that spirit alive throughout these compensation discussions but also I hope that they know they have the support of many members of this body in any future work that they can do to help us find the solutions to many, many problems that we will face here in the State of Maine.

House Amendment "C" is the Michigan plan which was unanimously adopted with, as we say, a twist. The amendment does take the best parts of the Blue Ribbon Commission's Report and incorporates them into the Michigan plan. This is really probably the best solution we are going to see to Workers' Compensation put before us and I would urge support for this amendment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote

yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "C" (H-1348) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 459

YEA - Adams, Aliberti, Anthony, Cahill, M.; Carroll, D.; Cathcart, Chonko, Clark, H.; DiPietro, Dore, Duffy, Erwin, Farnsworth, Goodridge, Gray, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketterer, Kilkelly, Lemke, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, J.; O'Dea, Oliver, Paradis, J.; Pfeiffer, Pineau, Powers, Rand, Richardson, Rotondi, Saint Onge, Skoglund, Stevens, P.; Swazey, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Cashman, Coles, Constantine, Cote, Crowley, Daggett, Donnelly, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Kerr, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevenson, Strout, Tammaro, Tardy, Tupper, Vigue, Waterman, Whitcomb, The Speaker.

ABSENT - Clark, M.; Gurney, Hepburn, Paul.

Yes, 55; No, 91; Absent, 4; Vacant, 1; Paired, 0; Excused, 0.

55 having voted in the affirmative and 91 in the negative with 4 being absent and 1 vacant, the motion did not prevail.

Representative Pineau of Jay offered House Amendment "D" (H-1349) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "D" (H-1349) to House Amendment "C" (H-1340) was read by the Clerk.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I will be brief. However, I believe this is a very important part that should be addressed, which wasn't addressed through the Blue Ribbon Commission's report.

From my work last summer on the bill, we had established criteria, criteria that was established before through pre-existing Maine law, on what it would take to discontinue benefits once they were already started. What the Blue Ribbon Commission report does is that it gives the Labor/Management Board of Directors direction to issue rules on discontinuances on when it could happen. However, there is no criteria that they are to use on these rules.

All this amendment does is put current Maine law,

inapplicable current Maine law, into the hands of the Board of Directors so they can use this in developing their criteria on discontinuances. Discontinuances on the Blue Ribbon Commission's Report is a very important issue to your injured workers. Basically what we have done is say that you can be cut after you are petitioned, if an insurance company petitions your board to cut your benefits, you can be cut and without saying why. So what would be your recourse in fighting the cut — it says, "Explanations will be taken from both parties" so I think this is a void. When I asked the commissioners who sat in front of us in front of the Labor Committee, I asked them if they had a problem with the criteria that was established and all four said no. I asked each one of them that question, "Was there a problem with the criteria that we as a legislature had established before." The answer was no and I made sure that all four of them responded to that so that is why I submitted the bill.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: The amendment that is being proposed before you changes substantially the initial bill as presented by the Commission and secondly that as amended by the Commission. They were asked specifically to look at the discontinuance provision of the statute as proposed and they changed it so that they would look at those where there were orders made and those where they were not. They have in effect changed that provision substantially by the amendment that you will see principally on Page 3 but it begins, I believe, on Page 2 of the amendment. You will also find in the bill itself that automatic discontinuances are substantially changed by this amendment. Therefore, I would suggest to you that which is being proposed does go back to that which was crafted through great acrimony, heat and tiredness in 1990 but it is not that which was Michigan. Michigan principally is that which is in the Commission's report so I would urge you to stick to the Commission's report and defeat House Amendment "D" which is before you by the good Representative.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I rise to answer the good fellow from Fryeburg's comments. We might have been tired and it might have been full of acrimony but these criterias have worked in cases of discontinuance so why would we not want to do that? I guess simply because we were tired and worked hard on it isn't a reason for me to vote against why we should do it now. That doesn't make sense to me.

The other thing is, yes the amendment does change discontinuances. I am very pleased that it does but it doesn't go far enough. Basically what the original report said on discontinuance, if we want to get to it, was that discontinuances could have just been handed down on January 1 saying, "There you are, you are discontinued" with no rhyme or reason to it. When this was brought to the Commission's attention, they immediately wanted to change it because that wasn't their intent. That is why I specifically posed the question to them about what was wrong with this criteria that we acrimoniously and tiredly put together on the floor of these bodies. The answer from them was that there was nothing wrong with it so I see nothing wrong with it here.

Since 1990 it has worked and it is only giving

the guidelines to the Board until that time. What happens with this Labor/Management Board — now think of the logistics of this, ladies and gentlemen of the House. We are giving this Labor/Management Board that we are going to set up — this is your job, you have got to do this, you have got to do that — what happens when somebody petitions the Board for discontinuance before they have had time to adopt the rules — that is what this answers. This gives the Board some place to look and a place to start, that's all it does. It doesn't significantly change and it isn't going to be the downfall of the report. What it does is that it is another way of protecting an injured worker against an insurance company.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: When the vote is taken, I request the yeas and nays.

I do want to point out that in many ways I agree with the gentleman from Jay as I so often do as he sympathizes with injured workers and I want to assure him that I have the same sympathy and I hope the system works as it did. I do agree that the amendment which was crafted and which appears on Page 3 of House Amendment "C" is a good middle ground for the purposes of getting into a new system. It is for that reason that I would urge the House to adhere to the amendment that the Blue Ribbon Commission adopted as a result of the persuasive argument that were advanced.

The automatic discontinuance prerogatives were circumscribed, were deleted, and this is a much better system as it appears on Page 3. I feel as though it is adequate and that it should be adopted by this House and, therefore, the amendment by Representative Pineau should be defeated. I urge the House to do that.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "D" (H-1349) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 460

YEA - Adams, Aliberti, Cahill, M.; Chonko, Clark, H.; Duffy, Erwin, Farnsworth, Goodridge, Gould, R. A.; Hale, Handy, Heeschen, Hichborn, Hogleund, Holt, Hussey, Jacques, Jalbert, Ketterer, Lemke, Lerman, Luther, Macomber, Martin, H.; McHenry, McKeen, Michaud, Mitchell, J.; O'Dea, Oliver, Paradis, P.; Pfeiffer, Pineau, Powers, Rand, Richardson, Rotondi, Saint Onge, Skoglund, Swazey, Tamaro, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Cathcart, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings,

Heino, Hichens, Joseph, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Mahany, Manning, Marsano, Marsh, Melendy, Merrill, Michael, Mitchell, E.; Morrison, Murphy, Madeau, Nash, Norton, Nutting, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Clark, M.; Gurney, Hepburn, Paradis, J.; Paul, Tardy, The Speaker.

Yes, 46; No, 97; Absent, 7; Vacant, 1; Paired, 0; Excused, 0.

46 having voted in the affirmative and 97 in the negative with 7 being absent and 1 vacant, the motion did not prevail.

(At Ease)

The House was called to order by the Speaker.

Representative Clark of Millinocket offered House Amendment "F" (H-1351) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "F" (H-1351) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: This amendment allows workers who are injured before January 1, 1993 who have the expectation of receiving benefits of permanent impairment to receive this before 1993.

It is a very simple bill. I don't think we ought to be cutting out everybody or gutting everybody before 1993. There is a lot of people out there looking for something because they need to survive and the last thing I want to do when I come back here in January, if the Lord lets me get reelected, is look to increase welfare, AFDC, and everything else because I think we are putting a lot of these people out on the street.

Representative Whitcomb of Waldo requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, Men and Women of the House: I would like to pose a question through the Chair.

We asked this very question yesterday and we were assured that this was already in the bill, that retroactivity was taken care of. Is that not true? Do we need this amendment to guarantee what the

Representative from Millinocket wants?

The SPEAKER: Representative Luther of Mexico has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: I can't answer that question. I did ask that question in caucus and it really wasn't given to me and that is one of the reasons why I had this amendment put forth today.

The last thing I want to do is cut the legs out from anyone to receive anything prior to 1993. Nobody can give me an answer of retroactivity or anything having to do with this bill. We are dealing with something here in a few days that is going to really affect a lot of people throughout this state. We haven't really got a lot of good answers, we haven't got a lot of good things to deal with. We are going to be going home with something that we are going to be passing on that I can't really explain to them when we do get home.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: In answer to the question, it is my understanding very clearly that those injuries that occur prior to January 1, 1993 are governed by the old law as to benefits. It is true that as to the procedures that do come into effect under the new law as of 1993, those would apply to all, not just those hurt between now and 1993, but all prior claims. Those injuries that occur between now and prior to January 1, 1993 are under the old law and get the benefits of the old law, they are not reduced by this statute.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti.

Representative ALIBERTI: Mr. Speaker, Men and Women of the House: I asked that question on every occasion that I could. At the caucus yesterday, I pinpointed specifically the expertise of the people involved as far as looking out for the concerns of retroactivity. Without question, I even made a nuisance of myself by asking the same question two or three times during the caucus. I am pleased that it came up here today because it is a matter of record now and the record is that anyone who receives benefits prior to 1993 will not be in jeopardy unless they go through a different process of evaluation. Is that the case or isn't that the case? I have heard several times over and over again.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I will attempt to respond to that question. I think that Representative Clark's concern is valid. However, I do think it is covered in House Amendment "C" (plain "C") on Page 7. There is reference under part 1 that deals with a variety of numbers, sections 211, 212, 213, 214. Section 212 deals with total incapacity which is the section I think specifically Representative Clark is concerned about with regard to retroactivity. As I see it, I believe Representative Mitchell's House Amendment "C" on Page 7 that will cover that.

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

Representative RAND: Mr. Speaker, Men and Women

of the House: The short story here is that benefits will not be cut retroactively. Anyone who is injured before January 1, 1993 will not receive the benefit reduction but all the procedures, all the procedural activity that goes on in the Workers' Compensation system will be retroactive. Therefore, it would be fair to tell your constituents who are presently injured and receiving Workers' Comp that their benefits will not be cut unless they are called to go through some of the new procedures. Under those circumstances, their benefits can be reduced or discontinued.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: I think Representative Rand explained it very well in detail. The same remarks that Representative Gwadosky gave us was the same thing that we asked yesterday in caucus and we were not really given the answer. If you think (if we pass this bill the way that it is) that these people aren't going to be brought in and going to be looked at through retroactivity, you have got another thought coming. That is one reason I put this amendment in. I want to guarantee that these people are not taken off the roll.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Men and Women of the House: I feel as though I know as much now as I knew before the explanation was given. I have heard our good leader say "I believe" that this has been taken care of in House Amendment "C."

I guess I would like very much to direct a question to Representative Mitchell as to what she believes or feels about that.

The other question I have to anybody who would be capable of giving me something concrete here to go by — what are the chances that these people who supposedly have benefits prior to January 1, 1993, what are the chances that they are going to be subject to these new procedures? Is this something that is going to happen once in a million times, once in a thousand times or five times for every ten people out there? Do we have anything that would give me something concrete to go by when I vote here?

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

Representative HALE: Mr. Speaker, I would like to pose a question through the Chair. When does the procedural retroactivity clause go into effect?

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

Representative RAND: Mr. Speaker, Men and Women of the House: In answer to Representative Hale, the retroactive procedures go into effect January 1st. The benefits — it doesn't go into effect unless the worker is called upon to go through one of the procedures which will include them because they have been made retroactive. That could indeed result in a benefit cut or a discontinuance.

To answer Representative Mahany as best as I can, as far as what is the likelihood of people being called in to go through these procedures, it is excellent, almost guaranteed.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: Workers' Compensation law is

terribly confusing as we know. We have been here for two decades attempting to adjust it and for those of us who adopted reforms in 1984, 1987, 1991 keep on going, we keep trying to do it and do it right.

I will try to explain to the best of my ability — I referenced earlier the concern that Representative Clark has and it is a valid concern and I would be right beside him fighting for this amendment if I didn't think it was already in House Amendment "C." It is a valid concern.

If you look at House Amendment "C", there is reference to various provisions that are excluded from the provisions of retroactivity. Those are Sections 211, 212, 213, 214. It doesn't mean anything unless you know what is in those sections. Let me delineate what those refer to. Section 211 deals with maximum benefits; 212 is compensation for total incapacity; 213 is compensation for partial incapacity; 214 is determination of partial incapacity; 215 is death benefits; 221 is coordination of benefits; 306 is time for filing of petitions; 325 is cost and attorney fees.

Representative Tracy, a while ago, asked me whether or not retroactively you could lose your attorney if you already had an attorney. Those things are excluded from being attached retroactively by the provisions of this bill. As I understand it by the information that I have in front of me now, and I stand corrected, and if I am wrong, I will be happy to vote with Representative Clark in a moment but I think as I read this bill and look at House Amendment "C", the numbers that have been delineated and the explanation for the categories in each of those numbers that that situation is taken care of.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: Will someone tell me what is going on? I know I am getting along and I am an old country boy and it takes a bit longer to sink in. This reminds me of when I was a kid and told to go out in the chicken pen and count the chickens. I came out with 40 different answers. How are we supposed to determine this? What is it? Someone says it will be all right, don't worry about it.

Just think now, if people can be called back in to determine their impairment — I know of a young gentleman that lost a leg or a foot less than a month ago on Canal Street in Lewiston, one of the vehicles ran over it. Will somebody please tell me if these people who have been impaired, who cannot work, will continue getting their checks? That is the main thing. Many people have called me up and asked what will happen after this goes through. I am going to go back and say, nobody knows. Maybe somebody has got the answer. I am saying again, I am a little thick, just a country boy, please explain to me what is going on.

The SPEAKER: Representative Jalbert of Lisbon has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Rand.

Representative RAND: Mr. Speaker, Men and Women of the House: This is a very confusing issue and I can certainly appreciate what all of us are going through here trying to deal with this very complicated issue.

I will try to give you an example to make this clear. If an injured employee is presently receiving

Workers' Compensation and whatever their benefits are, after January 1st when the new comp law becomes law and everything else is in effect, their benefits remain the same. Okay, if this employee is called in or given a 21 day notice of automatic discontinuance or reduction in their benefits, they now have to appear (probably) through the steps before an IME. This is just one example. The procedure that the IME uses will not be the same procedure that was used when the employee was first injured. The procedure to be used is in current law. It is a more difficult standard of proof. In that instance, the employee who was once deemed eligible for benefits, a certain level of benefits, could indeed be found ineligible for those benefits because the procedures include the IME. It includes, I would assume, as I said this is a very confusing thing, the 15 percent whole body which we haven't even touched upon yet. Yes indeed, the benefit cuts are not retroactive, but through the procedure process which is retroactive, benefits can, and I assure you, will be cut.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: I rise only because part of what I heard as an answer I believe to be incorrect. I can only give you my understanding of the Act.

It is true the procedures that come into effect on January 1, 1993 will apply to injuries that occurred prior but the 15 percent does not come into effect to those injuries. You are looking as if the law existed to that person prior to January 1, 1993. Therefore, if the person is entitled to recovery for whatever reason at that point in time, that continues ever after. The statute of limitations does not apply to that person, the right to attorney fees to represent that individual does not apply to that person, that person is entitled to benefits for 520 weeks under our present law, as you know, and that would be cut for those after January but not prior to that. They would be entitled to 66 and two-thirds of their gross pay exclusive of fringe benefits, up to the maximum amount allowed under the current law with COLA's that go into effect currently. All those things are still protected by the law.

The Representative is correct that the new discontinuance law would supersede the old discontinuance law. Therefore, if there was a prior order under the old law, an employer or insurer could have just discontinued them. Under the new law, if there is an old order in existence, you cannot do that without a hearing. You could without an order though have a discontinuance and an expedited hearing has to be called within 21 days. All sorts of things insofar as how you are going to treat this person procedurally is different. Probably under the new law, the procedure for mandatory mediation, I would suggest probably applies to old injuries. However, the appeals process is still there for the old injury because that process still continues — not the process I shouldn't say, the right to have a hearing from that still continues to the Board as it would for anyone else under the new law. It is intended, as I understand this law, to protect those hurt prior to January 1, 1993 as if they were under the old law, their rights, their duration, their benefits. However, how are they going to be administered? How those claims will be administered thereafter will take effect under the new law.

I would urge you to not support this amendment as

I understand it changes that substantially. It doesn't really change it, I don't pretend that it does, I am telling you it is already in the law.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

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

Seeing as House Amendment "I" presented by Representative Pineau was defeated this morning, people who are currently getting Workers' Comp and if they are called back to a new hearing, are they going to be under "clear and convincing evidence" standards or will they be under a standard "substantial evidence to the contrary?"

The SPEAKER: Representative Luther of Mexico has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Men and Women of the House: My understanding from talking to staff is that they would be under "substantial and preponderance" that was in 1991, if that was their injury time.

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "F" (H-1351) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 461

YEA - Adams, Aliberti, Bell, Cahill, M.; Cathcart, Chonko, Clark, H.; Duffy, Erwin, Farnsworth, Goodridge, Gould, R. A.; Graham, Gray, Hale, Handy, Heesch, Hichborn, Hoglund, Holt, Hussey, Jalbert, Ketterer, Lerman, Luther, Macomber, Mahany, Martin, H.; McHenry, McKeen, Michaud, Mitchell, J.; Morrison, O'Dea, Oliver, Pfeiffer, Pineau, Powers, Rand, Richardson, Ricker, Rotondi, Rydell, Saint Onge, Skoglund, Strout, Swazey, Tamaro, Townsend, Tracy, Treat.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Cashman, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichens, Joseph, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Michael, Mitchell, E.; Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, J.; Paradis, P.; Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ruhlin, Salisbury, Savage, Simonds, Simpson, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Tupper, Vigue, Waterman, Wentworth, The Speaker.

ABSENT - Clark, M.; Gurney, Hepburn, Jacques, Lemke, Paul, Sheltra, Tardy, Whitcomb.

Yes, 51; No, 90; Absent, 9; Vacant, 1; Paired, 0; Excused, 0.

51 having voted in the affirmative and 90 in the negative with 9 being absent and 1 vacant, the motion did not prevail.

Representative Hale of Sanford offered House Amendment "G" (H-1352) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "G" (H-1352) to House Amendment "C" (H-1340) was read by the Clerk.

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

Representative HALE: Mr. Speaker, Men and Women of the House: I urge you to support this amendment. This amendment allows an employee to have legal representation the same as the employer. We must remember that we are dealing here with a no-fault insurance and each party should have the same legal standards. To expect an employee to be able to mitigate their own case is positively ridiculous. To think that there is going to be any savings from this, whether they have an attorney or they don't, is also ridiculous. Anyone that gets an award is certainly going to add to that award any cost for an attorney. They might as well have the cost right up front. We come in here and represent our constituents and we want the scales of justice to be balanced. If you truly believe in having a level playing field, you will support the amendment on the floor.

Representative Marsano of Belfast requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "G" (H-1352) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 462

YEA - Adams, Aliberti, Anthony, Bell, Cahill, M.; Carroll, D.; Cathcart, Chonko, Clark, H.; Coles, Daggett, Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Gray, Hale, Handy, Heeschen, Hoglund, Holt, Hussey, Jalbert, Joseph, Kilkelly, Kontos, Larrivee, Lerman, Luther, Mahany, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Nadeau, O'Dea, Oliver, Pfeiffer, Pineau, Powers, Rand, Richardson, Saint Onge, Skoglund, Stevens, P.; Swazey, Tammaro, Tardy, Townsend, Tracy, Treat, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Cashman, Constantine, Cote, Crowley, DiPietro, Donnelly, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Graham, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hichborn, Hichens, Kerr, Ketterer, Kutasi, Lawrence, Lebowitz, Libby, Lipman, Look, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Morrison, Murphy, Nash, Norton, Nutting, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pines, Plourde, Poulin, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevenson, Strout, Tupper, Vigue, Waterman.

ABSENT - Clark, M.; Dore, Duffy, Gurney, Hepburn, Jacques, Lemke, Lord, Macomber, Paradis, J.; Paul, Pouliot, Whitcomb.

Yes, 57; No, 80; Absent, 13; Vacant, 1;

Paired, 0; Excused, 0.

57 having voted in the affirmative and 80 in the negative with 13 being absent and 1 vacant, the motion did not prevail.

Representative Joseph of Waterville offered House Amendment "H" (H-1356) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "H" (H-1356) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Men and Women of the House: Because you and I have heard over and over again today that it is recommended that we approve amendments and the bill that the Blue Ribbon Commission proposed and that the Labor/Management group agreed to, I have just that sort of an amendment.

If you look at the bill on Page 7 (on top of the page) and on Page 8 to line 10, this allows the Superintendent of Insurance to extend the residual market until March 3rd. This was not in the bill originally. Upon the concern of the Banking and Insurance Committee that perhaps it would take a longer period of time for the Maine Employer's Mutual Insurance Company to be up and running that perhaps we would need that window. Because the original bill called for a million dollar loan from the residual market, we also thought there may be a shortage of funds for start-up of this Maine Employer's Mutual Insurance Company. When this was expressed to the Blue Ribbon Commission, they said yes that's a possibility. We had testimony to say that it may take longer but, but, there is a possibility that if and when (and there should be) a director named for this group insurance, the residual market, the Mutual Employer's Insurance Company, that director then could start as of January 1, 1993 contracting the services needed to get this company off the ground. In other words, by repealing the section of law that the Banking and Insurance Committee felt might be necessary but at second look thought that we needed to hold people's feet to the fire to get this company started. We want those persons to act expeditiously, we want this company to be available for the employers of the State of Maine.

So, because this amendment was drafted to meet our concerns and when yesterday we asked the Blue Ribbon Commission if they could agree to it, they just threw up their hands, they had had enough. So, I urge you to support this amendment which repeals from Amendment "C" the language that the Banking and Insurance Committee thought was important.

The second very important part of this amendment is that it says that any surplus or deficit occurring during the extension period must be credited to or the responsibility of employers. Now, that is identical to 1988 Fresh Start, a creation of the Superintendent of Insurance at that time. Currently in Fresh Start, up until January 1, 1993, it is a 50/50 split of insurers being responsible 50 percent and employers being 50 percent responsible. If this amendment were repealed, there would be no residual market after January 1 and, therefore, would be a direct savings to employers in this state. I know that sounds complicated, it sounds complex, but those are the facts.

Mr. Speaker, when the vote is taken, I ask for the yeas and nays.

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

Representative MITCHELL: Mr. Speaker, Men and Women of the House: I will be very brief because that was an excellent explanation. This is one of those bizzare twists of legislating the Blue Ribbon Commission in the first place had exactly what Representative Joseph said. Since our committee went back to review how many policies are actually renewed in a residual market in that first quarter, I have been told it is upwards as high as 40 percent. So, if you don't enact this and allow this new company to at least take responsibility for all our small businesses that are now in that residual market, they are going to be left exposed to that Fresh Start deficit. So, I would encourage you to endorse this. I can't believe the Blue Ribbon Commission would have any problems with it whatsoever.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "H" (H-1356) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 463

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gwadosky, Hale, Handy, Heeschen, Heino, Hichborn, Hichens, Hoglund, Holt, Hussey, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lerman, Luther, Mahany, Manning, Martin, H.; McHenry, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, Nutting, O'Dea, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Skoglund, Spear, Stevens, P.; Strout, Swazey, Tammaro, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Coles, Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Hepburn, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Murphy, Nash, Ott, Parent, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Stevens, A.; Stevenson, Tupper.

ABSENT - Clark, M.; Gurney, Jacques, Jalbert, Macomber, McKeen, Paradis, J.; Paul, Simpson, Whitcomb.

Yes, 91; No, 49; Absent, 10; Vacant, 1; Paired, 0; Excused, 0.

91 having voted in the affirmative and 49 in the negative with 10 being absent and 1 vacant, House Amendment "H" (H-1356) to House Amendment "C" (H-1340) was adopted.

Representative Clark of Millinocket offered House Amendment "I" (H-1358) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "I" (H-1358) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: For the members who are still in the body, if you take your blue sheet and take some time and read this, there may not be so many questions asked. I want to congratulate the Majority Office for handing this out to all the members of the body, it really helps describe the amendments to the bill. This is another retroactivity part of it and it has to do with the provision of January 1, 1993 of the automatic discontinuance privilege for injured workers. It is a very simple amendment. I think we ought to take a close look at it and I think we ought to be voting for it this afternoon.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: First of all Mr. Speaker, when the vote is taken, I request the yeas and nays.

House Amendment "I" to House Amendment "C" creates some of the confusing administrative problems which has been the legislature's intent to try and remove. The problem with discontinuances is certainly one which merits our careful and close attention.

What this does is attempt to translate into what would be the new bill, House Amendment "C" which is the present amendment before us, some of the ills of the old system. For that reason, I urge the House to vote against it.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "I" (H-1358) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 464

YEA - Adams, Aliberti, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Coles, Crowley, Daggett, Dore, Duffy, Erwin, Farnsworth, Goodridge, Gould, R. A.; Graham, Gray, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketterer, Kilkelly, Kontos, Larrivee, Lemke, Lerman, Luther, Mahany, Marsh, Martin, H.; McHenry, Michael, Mitchell, E.; Morrison, O'Dea, Oliver, Pfeiffer, Pineau, Poulin, Powers, Rand, Richardson, Rotondi, Saint Onge, Skoglund, Strout, Swazey, Tammaro, Townsend, Tracy, Treat, The Speaker.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Constantine, Cote, DiPietro, Donnelly, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Heino,

Hepburn, Hichens, Kerr, Kutasi, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Melendy, Merrill, Michael, Mitchell, J.; Murphy, Nadeau, Nash, Norton, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pines, Plourde, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Simonds, Simpson, Spear, Stevens, A.; Stevens, P.; Stevenson, Tardy, Tupper, Vigue, Waterman, Wentworth, Whitcomb.

ABSENT - Clark, M.; Gean, Gurney, Macomber, McKeen, Nutting, Paradis, J.; Paul, Small.

Yes, 64; No, 77; Absent, 9; Vacant, 1; Paired, 0; Excused, 0.

64 having voted in the affirmative and 77 in the negative with 9 being absent and 1 vacant, the motion did not prevail.

Representative Ruhlin of Brewer offered House Amendment "J" (H-1359) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "J" (H-1359) to House Amendment "C" (H-1340) was read by the Clerk.

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

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: This particular amendment amends House Amendment "C" that is before you where House Amendment "C" on Page 2 now says the policy must make records available on a "need to know" basis. This particular amendment tries to more clearly define what is a "need to know."

What we are addressing here is the right of access to the medical and accident records of injured workers. We have always been very sensitive to keeping the privacy of those particular records. However, there is a legitimate need to be able to compile information from those records in the area of occupational safety and health as well as other medical data. When that is done, obviously a person's name is deleted and so forth.

The concern, as sponsor of this amendment, was that "need to know" was not clearly defined enough and that we should go a step beyond giving the new Labor/Management Board on the Workers' Compensation System a more well laid out path and what those records could be used for. I urge your support for passage of this amendment.

Representative Whitcomb of Waldo requested a roll call vote.

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

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: Of all the amendments that we have talked about today, I think this is one of the most crucial. This is one that I will be supporting because in the 12 years that I have sat in the Human Resources Committee, and most of that time was dealing with health care issues, early on we found out that this state really did not have a good idea in what we were doing out there. Since then, I think both the medical profession through the Health Care Finance Commission and through other agencies around here in Augusta, we have been able to decrease a number of things that the medical profession had been doing over the years.

To give you an example, the medical profession themselves have gone out to different areas of the state when they have found that there have been more caesarean sections done (I am just picking a place and please don't hold me to it) in let's say

Lewiston, Maine than they did in Belfast, Maine and more hysterectomies done in Portland, Maine than at Presque Isle, Maine. They have seen that and that is one of the ways that the medical profession themselves have tried to cut down medical costs.

If we don't have this ability to look in and deal with this research, quite frankly it is going to be very difficult even five years from now to be able to tell whether or not this piece of legislation really did do what it is supposed to be doing.

We are here at a Special Session of the Maine Legislature — everybody knows that a Special Session is very unusual, especially when you are dealing with one particular topic. If it is that important, we should really be looking at what the results are going to be so, hopefully, this is the last time that you future legislators will have to deal with this important issue. It is an important issue but if you don't have that ability to really have people out there doing the research and know what is going on — I have real good faith that people will be able to come back and show that this particular piece of legislation was a good piece of legislation. This piece here needs to be added to because of what we have found out in our studies. It is so important to have these studies out there. I don't think you are going to find, as we found in the Maine Health Care Finance Commission that when they do studies on specific injuries, they basically use numbers, they don't use people's names at all. It is a very important tool for the health care field and it will be an important tool for the Workers' Compensation System. The last thing you want to do is to come back here in three years with another Blue Ribbon Commission because we really don't know what happened. We have heard over and over in the last two years that the 1984 system did this and the 1987 system did that and the 1991 system did this but do we really know what it did and do we have studies for that?

I hope that you go along with Representative Ruhlin. Quite frankly, I think the Governor ought to go along with this because if he is pressing for this particular Workers' Compensation package, he will want to know what the results of this package will be two years from now, five years from now, ten years from now. Studies are important, I hope you go along with it.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: It seems to me of all the Democratic amendments outlined in this blue report that we received, this is certainly one that can go on the "can wait" category. This is an item that the legislature ought to consider in the context of the next session of the legislature. There is not one of us who would suggest that the item of Workers' Compensation will not be back before the legislature. It would make a great deal more sense to consider amendments, this one and others of its like in another session of the legislature, rather than to continue to amend the work of the Blue Ribbon Commission. Therefore, I urge that we defeat the amendment before us.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: I will be real quick. First, I would like to thank the gentleman from Waldo

when he pinpointed that the Democrats in this body are trying to make the bill better for Maine's citizens by amending the package.

Secondly, I have got an amendment coming later to this. However, Amendment "J" does a better job in stating, "including legitimate academic public policy, social science, medical" and what is very important to us in this issue is what Representative Ruhlin put in on, "occupational and safety." It is very important that we have this data at a later time to be able to go back and see what we have to do to improve the system. So, I hope you do support House Amendment "J" to House Amendment "C."

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "J" (H-1359) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 465

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Cashman, Cathcart, Chonko, Clark, H.; Coles, Constantine, Cote, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Goodridge, Gould, R. A.; Graham, Gray, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketterer, Kontos, Larrivee, Lemke, Lerman, Luther, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nutting, O'Dea, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tammaro, Tardy, Townsend, Tracy, Treat, Vigue, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carroll, D.; Carroll, J.; Crowley, Daggett, Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Gean, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichens, Kutasi, Lawrence, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Murphy, Nash, Norton, O'Gara, Ott, Parent, Pendexter, Pendleton, Pines, Pouliot, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Spear, Stevens, A.; Stevenson, Tupper, Waterman, Whitcomb.

ABSENT - Carleton, Clark, M.; Gurney, Kilkelly, Lebowitz, Macomber, Merrill, Paul.

Yes, 84; No, 58; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

84 having voted in the affirmative and 58 in the negative with 8 being absent and 1 vacant, House Amendment "J" (H-1359) to House Amendment "C" (H-1340) was adopted.

Representative Clark of Millinocket offered House Amendment "K" (H-1362) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "K" (H-1362) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House: This amendment makes it clear that the IME provision in the Maine Statute, Title 39a, Section 1312, does not apply retroactivity to the injured worker before January 1, 1993.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: I request a roll call.

I wonder if the Representative from Millinocket could describe the losses in terms of the expense to the savings in the Blue Ribbon Commission that this change would cause?

The SPEAKER: Representative Whitcomb of Waldo has posed a question through the Chair to Representative Clark of Millinocket who may respond if he so desires.

The Chair recognizes that Representative.

Representative CLARK: Mr. Speaker, Men and Women of the House: I personally cannot answer that but I hope there is somebody in this chamber who can answer that question for Representative Whitcomb. I personally can't answer that.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: I can only tell you that this clearly would make the new system more expensive. What clearly does happen and I would be the first to admit that, if you are hurt any time prior to January 1, 1993, you are controlled by the old IME regulations. That actually has never even been put into effect because there has been such disagreement and utter chaos in that wording of the old law.

However, the new law clearly does establish the IME and does establish the criteria for the IME so that it may not be rebutted other than by clear and convincing evidence. That is a higher standard, it does away with doctor shopping, there would be much more doctor shopping under the old law, there would be much more running to different experts and having a contentious type of situation where the insurers hire experts and the employee hires experts. The whole process is attempting to change this method of doing business.

If you put this in at least for those, everybody and there are many thousands of people out there on Workers' Comp currently, I presume, those people are still going to run by the old acrimonious system that we have rather than trying to work with a new system that focuses on mediation, on an IME (independent medical examiner) who does make the review and makes a finding. That way the insurance companies don't run around and get other people to controvert that opinion. I think this is a very substantive change. I can't tell you how much more, but it certainly makes the system cost more to run.

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

Representative PINEAU: Mr. Speaker, Men and Women of the House: I believe to answer the question on this is, the figures and the statement we got from the actuary, I didn't see where there was a hard cost associated with that.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote

yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "K" (H-1359) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 466

YEA - Adams, Aliberti, Bell, Cahill, M.; Clark, H.; Erwin, Farnsworth, Goodridge, Graham, Handy, Heeschen, Hognlund, Holt, Jacques, Jalbert, Ketterer, Lemke, Lerman, Luther, Macomber, Mahany, McHenry, McKeen, Michaud, O'Dea, Oliver, Paradis, J.; Pineau, Powers, Rand, Skoglund, Swazey, Tammaro, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carroll, D.; Carroll, J.; Cashman, Cathcart, Chonko, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duffly, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Gray, Greenlaw, Gwadodsky, Hanley, Hastings, Heino, Hepburn, Hichborn, Hichens, Hussey, Joseph, Kerr, Kilkelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Martin, H.; Melendy, Merrill, Michael, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nash, Norton, Nutting, O'Gara, Ott, Paradis, P.; Parent, Pendexter, Pendleton, Pfeiffer, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Small, Spear, Stevens, A.; Stevens, P.; Stevenson, Strout, Tardy, Tupper, Vigue, Waterman, Whitcomb, The Speaker.

ABSENT - Carleton, Clark, M.; Gurney, Hale, Nadeau, Paul, Simpson, Townsend.

Yes, 36; No, 106; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

36 having voted in the affirmative and 106 in the negative with 8 being absent and 1 vacant, the motion did not prevail.

Representative Farnsworth of Hallowell offered House Amendment "L" (H-1363) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "L" (H-1363) to House Amendment "C" (H-1340) was read by the Clerk.

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: This amendment is not a minor amendment to this bill. However, I would submit that despite its appearance, it is in fact conservative in total in the sense that I am proposing that we not do anything in the way of radical change where there are serious issues of implementation, terribly harsh consequences for employees and major issues of constitutionality. In my view, that is the case with respect to Part A and Part E of this entire bill as amended by House Amendment "C." Part A and Part E together represent everything in this bill except for the mutual fund, the insurance provisions of this bill. I realize that this sounds severe but I would say to you that I do believe we are very close on all of these parts that have been discussed through all of the amendments put forward today, but we are not close enough.

I would also say to you that we cannot leave here without passing something that deals with the insurance crisis. I am comfortable myself that the insurance portion of this bill is an appropriate, adequate and a very important solution to that situation. I also believe if we do not pass the insurance portion of this bill, we will have left our Workers' Comp situation in complete chaos by the beginning of the year and that is unacceptable.

The other parts of this bill, however, are not contingent on the insurance situation. They are separate. They are things that we have worked on for a long time, they are things that a lot of people have worked on for a long time. I believe that insurance is the heart of the immediate crisis here and that if we pass the remaining parts of this bill, we will have in fact addressed the Workers' Comp situation in a satisfactory manner and we can proceed in (as far as I am concerned) the next 24 hours or we can proceed to take longer to finish reaching an agreement on the other parts of this bill.

What we have here is, as has been raised today, the entire bill with only three amendments passed as I follow it. We have one with respect to veterans; one with respect to not extending the residual market and one with respect to further defining "need to know." Otherwise, we have the bill as amended by House Amendment "C" but we have serious issues of constitutionality that have been raised, we do not have any severability portion as far as I know in this legislation.

I would like to refer you, for example, to the Florida case which talks about this standard of clear and convincing evidence that is applied to decisions where there is a super doc involved. The Florida courts say basically that in these cases where there is a dispute between physicians and the bill provides a third physician to come in, (they call it a super doc) that doctor's opinion is presumed to be correct unless his opinion is overcome by clear and convincing evidence. The Florida court threw this out as unconstitutional saying there was no rational basis to imbue the super doc with a greater credibility than any of the other physicians. The clear and convincing evidence standard is an extraordinary stringent standard and to some degree usurps the fact finding responsibility, in their case, the Judge of Compensation Claims. They find this constitutionally deficient on both due process and access to court grounds. There are many other provisions of this that have been raised as being constitutionally deficient by the Bar Association as well as individual people in this legislature and outside. Those include matters with respect to the appeal provisions and with respect to the attorney provisions.

The entire subject of impairment to my mind is just a terribly harsh effect in this bill where we are talking about such an incredibly high proportion of people with permanent impairment and we are talking about a system (as many people have said) that leaves people effectively disabled but cut off from benefits.

I also believe that it will have its harshest effect on those with the lowest paying jobs, most of whom are women in this state in my opinion. And, we are going to only increase our General Assistance and our other costs as a society if we deal with this in this manner, that is to say, we have repetitive kinds of injuries and what our response is is not to

increase avoidance and not to increase prevention but simply to cut off liability. I think that we could take a little bit more time and bring the parties together that have worked so hard on this.

I realize, again, that in looking at this bill, we have spent most of our time talking about the benefits. I just want to reemphasize that as far as I am concerned, it is the insurance part where the crisis is, it is the insurance part where we have to take action before we leave today. The other parts are important and the other parts are close to being resolved. I am not opposed to resolving the other parts in a manner very close to what has been proposed but the Blue Ribbon Commission itself has changed its position several times since its initial report was put out, even as late as yesterday morning. I am sure if we gave them more time, they could continue to fax changes to each other. I believe that something this important that has this harsh a consequence on so many people in the state is not something that we should enter into lightly. I would ask you to consider — if you have been frustrated with the lack of our ability to really talk about this in a way that we can get educated, if you are frustrated with the potential for overturning the entire piece of legislation because of constitutional challenges and if you have had support for anyone of these amendments that have to do with various employee concerns, that we are just going to cut off rights and leave people out in the street without redress that this is the time to speak.

This amendment comes at the end, I wouldn't have been offering it if we had had some of these other things addressed. We have not. I am saying that we need to send the bill to the other body and that we need to send a bill to the public but what we need to send is insurance and I ask for your support.

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

Representative LERMAN: Mr. Speaker, Ladies and Gentlemen of the House: This amendment was exactly what I wanted to put in today. It is because we have worked on this for such a long time but the Blue Ribbon Commission has only been able to give us this final proposal in the last few weeks. There is 151 of us in this House and we have had to grapple with this in a very short period of time.

I ask every single one of you to get up and stand here and explain this package. I guarantee there are very few of you who could possibly do that and really understand what you are voting for today. That frightens me.

I have also been told that I am a person who is not going to be back here next January to deal with the problem so it shouldn't be a concern of mine. Well, ladies and gentlemen, I was elected just like you to be here until December and to do the very best job I can. Truthfully, I would not have been here today if it was not for some of these important issues because I felt compelled to stay here and do my duty to vote. I hope that you are going to do the same thing because what Representative Farnsworth has said is exactly how I feel about this proposed bill. I feel very strongly that there are a lot of constitutional problems with the bill as it stands. There are also a lot of issues that are controversial, there are things that you are going to send out to your people that is going to hurt them far more than you even know. You are going to have to come back here and tear it all to shreds. Why

would you want to do that? If you take the parts out that are controversial, that are going to hurt them and put them onto the rolls of the taxpayers and welfare rolls, I cannot see the savings that you are going to have. We only did this with a savings of 12 percent and that is off the backs of the injured workers. I cannot in good faith do that yet.

As I said before, I support the Maine Employer's Mutual Fund. I think it is a good plan, I think it is long overdue, we need to do this, but I want to do it in a form that is in a good form. If you would please support Representative Farnsworth's amendment, I think you would be doing yourself justice that you can do. I truthfully feel that this is going to be very harmful if you don't.

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: This certainly is the amendment that allows this legislature to do nothing to address the cost of the Workers' Compensation System. To read from the fiscal note for any of you who haven't read it, the amendment "eliminates all major administrative and benefit changes proposed by the bill. The projected costs of the bill will not be realized," I, for one, will not be voting for it. I urge the rest of the body not to and I ask for a roll call when the vote is taken, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti.

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

I have tried diligently to find out where the reference is to this amendment, specifically where is it, specifically Sections A and E? I just can't seem to locate the specific references you made.

The SPEAKER: The Representative from Lewiston, Representative Aliberti, has posed a question through the Chair to the sponsor of the amendment who may respond if she so desires.

The Chair recognizes that Representative.

Representative FARNSWORTH: Mr. Speaker, Ladies and Gentlemen of the House: In response to the last question first, you have to go to the original bill and in the original bill, Part A and E are more obvious than they are when you are looking at the amendment.

I also would like to respond to the comment about the fiscal note. In looking at the fiscal note, which I frankly didn't take the time to argue with because of the circumstances today, I looked at what the savings were in this bill because my understanding is that fiscal note has only to do with the General Fund's fund. I was rather shocked and not real happy to find out that the savings accorded the General Fund are that we are no longer going to provide (through state General Fund money) after next June half of the costs of the Workers' Compensation Commission, which will then have been transformed into a Board. We are going to pass along the cost of administration of this new system to employers by assessment so starting next June, we will be assessing employers and the insurance companies I guess, for the costs of administering this. Frankly, I think that alone is a good reason to take a second look at this because we are right there saying the way we are going to save money for the state is by passing the administrative costs of something the state has been doing along to employers and I find

that not acceptable.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "L" (H-1365) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 467

YEA - Adams, Cahill, M.; Cathcart, Clark, H.; Duffy, Erwin, Farnsworth, Goodridge, Hale, Heesch, Hoglund, Holt, Jacques, Ketterer, Lemke, Lerman, Luther, McHenry, McKeen, Michaud, Mitchell, J.; Oliver, Pfeiffer, Powers, Rand, Stevens, P.; Swazey, Treat.

NAY - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, D.; Carroll, J.; Chonko, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Handy, Hanley, Hastings, Heino, Hepburn, Hichborn, Hichens, Hussey, Jalbert, Joseph, Kerr, Kil Kelly, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Macomber, Manning, Marsano, Marsh, Martin, H.; Melendy, Merrill, Michael, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Dea, O'Gara, Ott, Paradis, J.; Paradis, P.; Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Sheltra, Simonds, Simpson, Skoglund, Small, Spear, Stevens, A.; Stevenson, Strout, Tamaro, Tardy, Townsend, Tracy, Tupper, Vigue, Waterman, Wentworth, Whitcomb, The Speaker.

ABSENT - Cashman, Clark, M.; Gurney, Mahany, Parent, Paul, Pineau.

Yes, 28; No, 115; Absent, 7; Vacant, 1; Paired, 0; Excused, 0.

28 having voted in the affirmative and 115 in the negative with 7 being absent and 1 vacant, the motion did not prevail.

Representative Farnsworth of Hallowell offered House Amendment "M" (H-1365) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "M" (H-1365) to House Amendment "C" (H-1340) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Farnsworth.

Representative FARNSWORTH: Mr. Speaker, Ladies and Gentlemen of the House: In the alternative, I would suggest the following, this Amendment "M" essentially removes everything in the bill that makes any portion of the bill retroactive. There have been various bills before you today that make one piece here and there retroactive and the simplest reason I would give you for that proposal is that people who are currently receiving benefits, as has been stated

the benefit amount is not affected by this bill as I understand it, but the procedures do apply. Yet, when their awards were made, they were made — in many cases, they settled cases or decisions were made about how to pay them and it was done in the context of the system as it stood in place at the time. I simply think it is unfair to go back in and change the way this operates because there is no question that the new procedures will in fact serve to reduce benefits in many cases. For that reason and the reason that I am concerned about, as I said, about some of the constitutionality issues, I would ask for your support on this bill.

I would point out the way that it would operate is similar to the way the current system operates in that the new Board would be responsible to administer both under the old and under the new law which is how they operate now.

Representative Small of Bath requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "M" (H-1365) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 468

YEA - Adams, Aliberti, Cahill, M.; Carroll, D.; Clark, H.; Duffy, Erwin, Farnsworth, Goodridge, Hale, Handy, Heesch, Hoglund, Holt, Jacques, Ketterer, Kil Kelly, Larrivee, Lemke, Lerman, Luther, Macomber, McHenry, McKeen, Michaud, Mitchell, J.; Oliver, Paradis, J.; Pfeiffer, Powers, Rand, Richardson, Rotondi, Saint Onge, Skoglund, Swazey, Tamaro, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Anthony, Ault, Bailey, H.; Bailey, R.; Barth, Bell, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Cashman, Cathcart, Chonko, Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hanley, Hastings, Heino, Hepburn, Hichborn, Hichens, Hussey, Jalbert, Joseph, Kerr, Kontos, Kutasi, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Manning, Marsano, Marsh, Martin, H.; Melendy, Merrill, Michael, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Norton, O'Dea, O'Gara, Ott, Paradis, P.; Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Rydell, Salisbury, Savage, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevenson, Strout, Tardy, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Clark, M.; Gurney, Mahany, Nutting, Parent, Paul, Pineau, The Speaker.

Yes, 41; No, 101; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

41 having voted in the affirmative and 101 in the negative with 8 being absent and 1 vacant, the motion did not prevail.

Representative Rydell of Brunswick offered House Amendment "N" (H-1367) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "N" (H-1367) to House Amendment "C" (H-1340) was read by the Clerk.

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

Representative RYDELL: Mr. Speaker, Men and Women of the House: It has been a long day and we have been grappling with a very, very difficult issue. One of the most distressing provisions of this bill for me and the amendment before us is the 15 percent whole body impairment as the sole determination of duration of benefits for people who are permanently or partially impaired. If your body is 15 percent or more impaired, you are on one side of the line and if you are 14.9 percent, you are on the other side of the line.

I understand the desire for simplicity but, unfortunately, workplace injuries are not simple and people in pain need us to make appropriate decisions on their behalf. Using a medical term and medical evaluation as the sole criteria until January 1, 1998 when we then will allow the actuaries to take over. An actuary uses numbers and we have in the amendment a discussion about the threshold adjustment, the 25 percent of cases exceeding that threshold. Again, we are talking about numbers and not real people. I am not satisfied with that, I am very disturbed that we who represent real people, some of whom are our neighbors, our friends, towns people, and the citizens of this state will ignore all the factors except the percentage of medical impairment.

I refer to the Times Record article, which I did not know was going to be printed today, which talks about this very problem. It also mentions a Texas case in which that particular section was deemed to have been ruled unconstitutional. I believe that we will have the same challenge in our state.

I also believe that we should not use the AMA guide to the evaluation of permanent impairment any longer than is absolutely necessary. The guide itself tells us not to use in a manner in which it is being used in this amendment. The guide says that "the accurate and proper use of medical information to assess impairment depends on the recognition that whereas impairment is a medical matter. Disability arises out of the interaction between impairment and external demands, especially those of an individual's occupation. Impairment means an alteration of an individual's health status, that is assessed by medical means. Disability must be assessed by non-medical means."

The AMA guide also goes on to say that "we encourage each system not to make a one-to-one translation of impairment to disability; in essence, creating a use of the guide which is not intended." They also ask that "each commissioner or hearing official must come to a conclusion based on his or her own assessments of the available medical and non-medical information."

As I began to think about how we could deal with this problem of needing to achieve a certain degree of savings, needing to pass comprehensive reform now, and needing to treat people as people, I came up with the idea that what we could do was to put in place that 15 percent but then require that the Board, in the next two years, study this issue and take only two years to do that. Take these two years to look

at all aspects so that this amendment that I am presenting reformats the language dealing with benefits and duration of compensation for partial incapacity and that threshold adjustment and the dates of injury. It gives the Board, not hearing officers, but the Board, discretion in cases of hardship when the person cannot return to gainful employment. But more importantly, it requires the Board to look at the problem of impairment on a broad basis, to study whether the level of impairment is appropriate standard, whether a different standard should apply. The Board shall consider all relative data, medical and statistical information, models from other states. I would hope also they might get some models from other countries, I think some of the Canadian Provinces have also been looking at this problem. And, they should look at the literature on the subject of functional incapacity and impairment.

What we are talking about is trying to get people back to work, judging on their ability to work. The dentist who loses his or her manual dexterity obviously cannot work as a dentist. If that person has been a successful dentist and has the means to go on to, for example, law school, that person probably could earn a very good living and would be back at work at the end of three years. If we are talking about an unskilled manual laborer who totally loses his or her manual dexterity, what are their options? What kind of options will that person have to wait all the way until 1998, at the very end of five years, at the very end of those 260 weeks means that we will leave all those people in limbo. I believe that there will be sufficient evidence and sufficient data for the Board to change the standard, given a two year period of study. I believe that the workers of this state who will have permanent partial injuries deserve to know the end of a shorter period of time than five years what their status will be.

There is no fiscal note, it reformulates what is in the amendment, it asks that the Board complete its study and submit its findings in the form of legislation to the 117th Legislature.

I can tolerate our leaving the standard there for that period of time. I do not think we should tolerate it being left there for five years. I believe this amendment is an improvement over the current amendment and I would ask for your help in its adoption.

Mr. Speaker, when the vote is taken, I would request a roll call.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: Since I disagree with the Representative from Brunswick and agree with the Representative from Vassalboro, I did want to make a statement because I think the important aspect of what it is that we are dealing is really found on Page 5, Paragraph 2 of Representative Mitchell's House Amendment "C" and that is the threshold adjustment which I think is a more satisfactory way of approaching the problem which Representative Rydell has outlined than Representative Rydell's amendment. I do agree with her with respect to when she talks about dealing with the difficulty of the medical translation of information into evidence and that is something with which the legal profession and the Workers' Compensation Commission has been and will have to continue to deal with.

I think the most salient thing that came out of

the group that Representative Rand read into the Record today had to deal with the question of whether or not there should be a 7 percent or a 15 percent level of impairment before you got into the lifetime group. Have in mind that one of the benefits that was supposed to be put into this bill was for the person who was significantly hurt and would fall within the 25 percent of the people who make up the lifetime groups. Seventy-five percent were going to fall into the small group and that is where the money was going to be saved.

Now the difficulty comes in trying to determine whether or not the 15 percent or the 7 percent is right and so what they did, (they, meaning the people who helped Representative Mitchell craft this amendment) was to recognize that division between 75 and 25 and deal with the threshold adjustment. It seems to me as though that will work. All of the compromises that I have seen here in the legislature, two competing bodies presented evidence which they both felt was sound, either way this will be protected and the bill will be enhanced because of the existence of the threshold adjustment, I feel, if it is attempted and if it is applied fairly. I think it will be because the key is the 75/25 and not the 15 and 7. If you accept that, then this threshold amendment will make this part of the provision work and I think it will be better than what Representative Rydell is attempting to sell you this afternoon.

I urge you to reject this amendment and to support Representative Mitchell's amendment.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Ladies and Gentlemen of the House: I urge this body to consider very seriously Representative Rydell's amendment and to vote in favor of it. As she pointed out, it does not have a fiscal note on it and it addresses what to me is the most troubling aspect of the bill before you. This is the provision which deals with permanent/partial impairment. As has already been noted by a number of speakers today, it relies entirely on the American Medical Association's impairment guidelines which they say in their own guidelines that they are not intended to be used for the purpose for which this bill puts them. There have been decisions in other states that have found this use of the guide to be unconstitutional and, therefore, I think you are treading onto rather dangerous waters in terms of leaving this in the legislation.

Representative Rydell's amendment will address it in the sense that it requires a study to look at whether it is working the way it is supposed to work and whether people are being unfairly and arbitrarily cut off from benefits when they are seriously impaired and cannot in fact get gainful employment. It makes a lot of sense, it has a study to be done in two years as opposed to five and it seems to me to be a sensible way to address the problem.

I hope that you will seriously consider this and vote for it because it measurably improves the bill before you.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: I don't want to belabor this but because I feel so strongly about it, I thought I would at least state my views on the Record. Because

I have discussed this with some of my colleagues in the House, for instance Representative Lipman who thinks this will create a terrible problem because we will be switching perhaps between certain percentages. Now we won't be switching between certain percentages, that is 7 or 9 or 12 or 14, unless there is a change in the position of money that is created by the 75/25 split.

What we are attempting to do is to say that the 25 percent of people that are really hurt should have lifetime benefits. That seems to me to be a pretty good idea measured against the money, not in view of the percentage, but measured against the money. That is the impact that this will have. What we are saying is, people who are marginally injured will not be protected but we want to make sure that that block of money for the serious injured is available to them. That is what we are trying to do. It seems to me as though when you get into the problems that Representative Treat and Representative Rydell legitimately discussed, it is confounding, it is really difficult to come to grips with it, but if you think in terms of the benefits, I think this is a better way to get the benefits to the people that are really hurt and that we want to get them.

I urge you to reject the pending motion.

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

Representative RYDELL: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to remind everyone that if the Board determines that that 75/25 is an appropriate threshold, when they have completed their study, they will look at that in the course of their study and then they will come back and make that recommendation to the legislature. They will look at all factors, all standards and they will have the opportunity to do this over a two year period and come back to us giving us the opportunity to then reexamine this and understand why the standards they are proposing at that time would be appropriate.

I do not know and I am not trying to guess what their answers will be. All I am trying to do is to assure injured workers, workers who are injured after January 1, 1993, that they will not be in limbo until 1998 and that we will require that the Board look at all the factors that are of importance in determining whether a person has earning capacity, the capacity to work and earn a living and to provide for himself or herself and their family.

I urge your adoption of this amendment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "N" (H-1367) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 469

YEA - Adams, Aliberti, Anthony, Bell, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Constantine, Daggett, Dore, Duffy, Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Gray, Hale, Handy,

Heeschen, Hichborn, Hوجلund, Holt, Hussey, Jacques, Joseph, Ketterer, Kilkelly, Lemke, Lerman, Macomber, Mahany, Martin, H.; McHenry, Michael, Michaud, Mitchell, E.; Mitchell, J.; O'Dea, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Powers, Richardson, Rotondi, Rydell, Saint Onge, Skوجلund, Stevens, P.; Swazey, Tammaro, Tracy, Treat, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Coles, Cote, Crowley, DiPietro, Donnelly, Duplessis, Dutremble, L.; Farnum, Farren, Foss, Garland, Graham, Greenlaw, Gwadodsky, Hanley, Hastings, Heino, Hepburn, Hichens, Kerr, Kontos, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, Luther, MacBride, Manning, Marsano, Marsh, Melendy, Merrill, Morrison, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Pendexter, Pendleton, Pines, Plourde, Poulin, Pouliot, Reed, G.; Reed, W.; Richards, Ricker, Ruhlin, Salisbury, Savage, Sheltra, Simonds, Simpson, Small, Spear, Stevens, A.; Stevenson, Strout, Tardy, Townsend, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Clark, M.; Gurney, Jalbert, McKeen, Parent, Paul, Rand.

Yes, 60; No, 83; Absent, 7; Vacant, 1; Paired, 0; Excused, 0.

60 having voted in the affirmative and 83 in the negative with 7 being absent and 1 vacant, the motion did not prevail.

Representative Pineau of Jay offered House Amendment "E" (H-1350) to House Amendment "C" (H-1340) and moved its adoption.

House Amendment "E" (H-1350) to House Amendment "C" (H-1340) was read by the Clerk.

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

Representative PINEAU: Mr. Speaker, Ladies and Gentlemen of the House: House Amendment "E" is in front of you today because of the work done by the Labor/Management group, the group of 16, from yesterday morning.

House Amendment "E" - I will go into it in just a bit, I want to tell you how it came about in the history of the amendment. When the Labor/Management group failed to induce the final Blue Ribbon Commission package, they issued a sheet stating some of the points of reason why they didn't support it, either the language wasn't strong enough or whatever. I met with several members of the group of Labor/Management, some from one side and some from the other, to try to see if we could work closer with the Blue Ribbon Commission Report to what the Labor/Management group could accept. As the good Representative Richardson from Portland stated earlier, the strength of that group and how they came about, and the hours and the work they have put in, I believe has to be taken with great weight with clear and convincing weight to this body.

In the Statement of Fact going to the amendment, the first part deals with the expedited procedure for confirmation of the Workers' Compensation Board. Again, the logistics of what we are trying to do and how we are going to do it, this goes only to the expedited process of the original confirmation. The other part, if you go to where it says it specifies where a member of the Board may not be a service provider, this again goes to the contention of the Labor/Management group saying that they don't want

people in the system running the system. They don't want people with baggage running this thing.

The confidentiality policy, the next part, was already accepted by this body on a change on the amendment from the good Representative from Brewer, Representative Ruhlin.

Number four, very, very important that we collect the data and analyse to advise what about the functional capacity problem. The functional capacity problem was a major issue. The way I have worded it in this amendment, there is no cost as you can see by the fiscal note. What it does is it says, take the hard data, once we get it, look at it and then determine. It leaves it up to the Labor/Management Board of Directors for that decision. If you are afraid of leaving Workers' Compensation up to the Labor/Management Board, vote no on this amendment. Okay? Then you get up and scream all you want but if you fear the Labor/Management having its hand in the Workers' Compensation, vote no.

On five, on the elimination concerning the maximum benefits, the part that that took out has already been re-amended by the Representative from East Millinocket, Representative Michaud.

Six, the confirmation of the Employer's Mutual Company, I find that to be a very important part. A big part of the Blue Ribbon Report is building the Maine Mutual. What we did here was guarantee the confirmation process through the B&I Committee.

When we go to number seven, that falls into that.

Eight, one of the big contentions, if not the biggest one you are hearing from your injured workers and from people on the street, (I know in my area it has been and people have been calling me from out of my area) is what is happening to people's rights to get an attorney and to have that attorney paid if they need one in the comp system, knowing that what we are trying to do is build a system that is less litigious. However, if one is needed, what do we do? Okay, what this did by wording it this way as you can see by the fiscal note, there is no cost on this part, and what that is that it leaves it up again to the Workers' Compensation Board to study the provision of legal representation and make a decision and come back to the legislature in what ought to be done, if anything different. Now this is the big part of contention, we all heard that lawyers are the downfall of society as we know it today, some argue yes, some argue no, but I dare say that everyone of us in this body has used one or more many times during our lives. I would hate to think that we would tie the hands of injured workers so they couldn't get legal representation. As a matter of fact, there are quite a few in this body that make their living doing that. All this does, again, is let the Labor/Management Board, the Workers' Compensation Board, decide what legal representation changes, if any, ought to be incurred in the future.

If you fear leaving Workers' Comp up to the Labor/Management Board, vote no. If you don't and you really are concerned with how this Act is going to be logistically put into work and how it is going to be monitored as it is evolving and that the confirmation process will guarantee speed and efficiency, vote yes. Thank you!

The SPEAKER: The Chair recognizes the Representative from Waldo, Representative Whitcomb.

Representative WHITCOMB: Mr. Speaker, Men and Women of the House: A couple of interesting notes that we have heard in some of the presentations on

some of the previous amendments rejected is that since there is no reference to a fiscal note or the fiscal note says there is no cost, it has been suggested that it doesn't affect the cost level of the Workers' Compensation System. That, particularly in regard to this amendment, is not correct.

If this amendment should pass, we would not be lowering the cost of the Workers' Compensation System as we have it constructed presently in Maine. Just for the information for this body, this discussion has been considered carefully by the Blue Ribbon Commission, they labored long and hard about the composition of the Board and its duties, we would be overriding a decision that that Board has made. It is for that reason that I urge rejection of this amendment, that and the fact that we would not be achieving one of our desired goals which is to lower the cost. Mr. Speaker, I request a roll call.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Coles.

Representative COLES: Mr. Speaker, Ladies and Gentlemen of the House: I fail to understand, the remarks of the previous speaker totally baffle me. If you go through this item by item, it is very difficult for me to see where there are any costs added to the system by this amendment. The confirmation process does not change the cost of the system. The fact that this member of the Board may not be a service provider does not change the cost to the system.

The confidentiality policy does not change the cost to the system. The analysis and collection of data shouldn't change the cost to the system because they ought to be doing it anyway. This simply makes sure that they are going to.

The confirmation of the incorporates — how does that change the cost to the system? We all agree that we need to reduce the cost of the system but if we are going to succeed in our goal, we have to be honest and accurate in our assessment of what adds costs and what doesn't.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of of House Amendment "E" (H-1350) to House Amendment "C" (H-1340). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 470

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Coles, Cote, Daggett, DiPietro, Dore, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi,

Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tammaro, Tardy, Townsend, Tracy, Treat, Vigue, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Constantine, Crowley, Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Gray, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichens, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Murphy, Nash, Norton, Nutting, Ott, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Spear, Stevens, A.; Stevenson, Tupper, Waterman, Whitcomb.

ABSENT - Bailey, H.; Clark, M.; Duffy, Gurney, Parent, Paul, Wentworth.

Yes, 87; No, 56; Absent, 7; Vacant, 1; Paired, 0; Excused, 0.

87 having voted in the affirmative and 56 in the negative with 7 being absent and 1 vacant, House Amendment "E" (H-1350) to House Amendment "C" (H-1340) was adopted.

The SPEAKER: The pending question before the House is adoption of House Amendment "C" (H-1340) as amended by House Amendments "A" (H-1345), "E" (H-1350), "H" (H-1356), & "J" (H-1359) thereto.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "C" (H-1340) as amended by House Amendments "A" (H-1345), "E" (H-1350), "H" (H-1356), & "J" (H-1359). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 471

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lerman, Lord, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, A.; Stevens, P.; Strout, Swazey, Tammaro, Tardy, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichens, Kutasi, Lebowitz, Libby, Lipman, Look, MacBride, Marsano, Marsh, Merrill, Murphy, Nash, Ott, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Spear, Stevenson, Tupper, Whitcomb.

ABSENT - Clark, M.; Gurney, Parent, Paul.
 Yes, 98; No, 48; Absent, 4; Vacant, 1;
 Paired, 0; Excused, 0.

98 having voted in the affirmative and 48 in the negative with 4 being absent and 1 vacant, House Amendment "C" (H-1340) as amended by House Amendments "A" (H-1345), "E" (H-1350), "H" (H-1356), & "J" (H-1359) thereto was adopted.

Representative Stevens of Bangor offered House Amendment "O" (H-1368) and moved its adoption.

House Amendment "O" (H-1368) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Stevens.

Representative STEVENS: Mr. Speaker, Ladies and Gentlemen of the House: I thank my colleagues who brought to my attention the error of my previous ways and pointed out the good parts of my last amendment.

This amendment is an attempt to put that good part of my last amendment before the body. All this amendment does is to allow a party to request a different hearing officer of their appeal so that the district hearing officer will have a fresh look at the case that that hearing officer decided. Both parties, either party, may appeal and request that a different hearing officer hear the case. It shouldn't be anymore costly, anymore time-consuming, anymore anything but give the public at least the impression that they are having a fair shake before a different adjudicator.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: When the vote is taken on this, I request the yeas and nays.

I would like to point out to my good friend from Bangor that the problem with this is simply that it creates a greater administrative nightmare than exists under the present system. The present system doesn't work. At some point, people's problems have to be resolved by a decision making authority. The theory is that a hearing officer will do it. To suggest that an appeal with a dry record, that is, no live witnesses, no anything else is going to be better done by another rather than asking a conscientious individual to review his or her thoughts makes no sense.

I urge the House to reject this. It is a cumbersome procedure which will not be helpful to the individuals, I feel certain.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Stevens.

Representative STEVENS: Mr. Speaker, Men and Women of the House: I can only suggest a common sense approach to it. Put yourself in the position of someone who just lost a case. Are you going to tell that person that this is your right to appeal, you are only guaranteed right to appeal. Are you going to tell that person that their only guaranteed right to appeal has to be with the exact same person who just told you no? Is that a commonsensical thing for people to think is fair?

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having

expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "O" (H-1368). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 472

YEA - Adams, Aliberti, Anthony, Bell, Carroll, D.; Cathcart, Chonko, Clark, H.; Coles, Crowley, Daggett, Dore, Duffy, Duplessis, Erwin, Farnsworth, Goodridge, Gould, R. A.; Graham, Gray, Hale, Handy, Heeschen, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kilkelly, Kontos, Larrivee, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, O'Dea, Oliver, Paradis, J.; Pfeiffer, Pineau, Poulin, Powers, Rand, Ricker, Rotondi, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Swazey, Tamaro, Tardy, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Cashman, Constantine, Cote, Donnelly, Dutremble, L.; Farnum, Farren, Foss, Garland, Greenlaw, Gwadosky, Hastings, Heino, Hepburn, Hichens, Kerr, Ketterer, Kutasi, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Murphy, Nadeau, Nash, Norton, Nutting, O'Gara, Ott, Paradis, P.; Pendexter, Pendleton, Pines, Plourde, Pouliot, Reed, G.; Reed, W.; Richards, Richardson, Ruhlin, Salisbury, Savage, Spear, Stevens, A.; Stevenson, Strout, Tupper, Vigue, Waterman, Whitcomb, The Speaker.

ABSENT - Cahill, M.; Clark, M.; DiPietro, Gean, Gurney, Hanley, Parent, Paul, Small.

Yes, 71; No, 70; Absent, 9; Vacant, 1; Paired, 0; Excused, 0.

71 having voted in the affirmative and 70 in the negative with 9 being absent and 1 vacant, House Amendment "O" (H-1368) was adopted.

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

Representative RUHLIN: Mr. Speaker, having voted on the prevailing side, I move that we reconsider our action whereby House Amendment "I" (H-1353) failed of adoption.

Mr. Speaker, Ladies and Gentlemen of the House: When we originally voted on this, I think I was remiss in failing to take into consideration some of the discussions we had during the long summer of our shutdown. Those of us who were involved in the Workers' Compensation discussions at that time spent a great number of hours giving consideration to the terminology that should be used when giving weight of evidence, whether there should be a preponderance of evidence, whether there should be clear and convincing evidence, should it be beyond a reasonable doubt, should it be substantial - I feel in further reflection and in recalling those discussions and then having additional information made available - I want to quote a judge who discusses a Florida case that was mentioned earlier. He says, "Clear and convincing evidence standard, the standard of clear and convincing evidence is an extraordinarily stringent standard." I had looked at it myself as a harsh standard, as a standard just short of beyond a

reasonable doubt. In voting for, actually in my case, against this amendment, I was looking more at a substantial or preponderant amount of evidence from the IME. The IME's weight before a hearing officer should not be so great as to rob that hearing officer of his rights to make a decision. That is basically what the weight of clear and convincing evidence does. It is such a weighty level that it almost removes from that hearing officer his decision making process. I will go on to quote this particular judge in the Florida decree. He said, "The clear and convincing evidence standard is an extraordinary stringent standard and to some degree usurps the fact-finding responsibility of the judge of the confirmation claims." I do not think that is the intent here in the State of Maine. I am not going to discuss the constitutionality of it on the due process clause or anything else. What we want, I think, is to stop doctor shopping. I think what the Blue Ribbon Commission wanted was to stop doctor shopping. That is how we can reduce costs but let's do it in a reasonable manner. Let's do it so that the IME's weight has more than the normal weight. His weight has more than the average weight, his weight is a preponderance weight, let's do it at that level rather than to say it must almost be beyond a reasonable doubt.

I hope, therefore, you will go along with the motion to reconsider.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Ladies and Gentlemen of the House: I do hope that the House will not reconsider. I find this a very difficult issue to address because it is, in many ways, a convoluted provision.

First of all, I would like to say that the investigation which we have had done suggests to us that there is not a Florida opinion that makes the kinds of statements, with respect to Workers' Compensation law, that the Representative from Brewer said. I don't mean to suggest that he is in error, I simply don't know. As you might imagine, Florida law is not the easiest thing to obtain.

I would like the opportunity at some point to review that but I don't think the law of Florida is relevant to the question that this presents. If you read the amendment, what it purports to do is to separate into two independent medical examiners into two separate categories. In the first instance, if the medical examiner is taken by the party, then that person's judgment is final. The question is whether or not an assigned independent medical examiner's opinion is going to be accorded the same weight and there is this writing provision to the contrary.

If you look at the language of what the amendment proposes to do, you can see that what you are doing is simply creating an administrative nightmare because, contrary evidence does not include medical evidence not considered by the independent medical examiner. Consequently, what you are doing is you are having an "after the fact" test of the medical evidence on the basis of having an independent medical examiner evaluate it and then you are giving this Board the opportunity to do whatever it wants with whatever is in the record as long as it is in the record. It is an opening of the dispute resolution process beyond what is considered and I cannot believe that it will not in fact destroy what is intended to be accomplished by the bill itself.

I would urge the House not to reconsider.

I would request a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of the Representative from Brewer, Representative Ruhlin, that the House reconsider its action whereby House Amendment "I" (H-1353) failed of adoption. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 473

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Graham, Gray, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nutting, O'Dea, O'Gara, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tamaro, Tardy, Townsend, Tracy, Treat, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Carleton, Carroll, J.; Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichens, Kutasi, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Murphy, Nash, Norton, Ott, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Spear, Stevens, A.; Stevenson, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Gurney, Parent, Paul, Pouliot.

Yes, 92; No, 54; Absent, 4; Vacant, 1; Paired, 0; Excused, 0.

92 having voted in the affirmative and 54 in the negative with 4 being absent and 1 vacant, the motion to reconsider did prevail.

Representative Whitcomb of Waldo requested a roll call on adoption of House Amendment "I" (H-1353).

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is adoption of House Amendment "I" (H-1353). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 474

YEA - Adams, Aliberti, Anthony, Bell, Cahill, M.; Carroll, D.; Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Cote, Daggett, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Goodridge, Gould, R. A.; Gray, Gwadosky, Hale, Handy, Heesch, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketterer, Kilkelly, Kontos, Lemke, Lerman, Luther, Macomber, Mahany, Manning, Martin, H.; McHenry, McKeen, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, O'Dea, Oliver, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Powers, Rand, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simpson, Skoglund, Stevens, P.; Strout, Swazey, Tamaro, Townsend, Tracy, Treat, Wentworth.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Boutilier, Bowers, Butland, Carleton, Carroll, J.; Constantine, Crowley, Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Graham, Greenlaw, Hanley, Hastings, Heino, Hepburn, Hichens, Kutasi, Larrivee, Lawrence, Lebowitz, Libby, Lipman, Look, Lord, MacBride, Marsano, Marsh, Melendy, Merrill, Murphy, Nash, Norton, Nutting, O'Gara, Ott, Pendexter, Pendleton, Pines, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Simonds, Small, Spear, Stevens, A.; Stevenson, Tardy, Tupper, Vigue, Waterman, Whitcomb.

ABSENT - Gurney, Kerr, Parent, Paul, Pouliot, The Speaker.

Yes, 80; No, 64; Absent, 6; Vacant, 1; Paired, 0; Excused, 0.

80 having voted in the affirmative and 64 in the negative with 6 being absent and 1 vacant, House Amendment "I" (H-1353).

Representative Whitcomb of Waldo requested a roll call on passage to be engrossed as amended.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is passage to be engrossed as amended House Amendments "B" (H-1339); "I" (H-1353); "O" (H-1368); and "C" (H-1340) as amended by House Amendments "A" (H-1345), "E" (H-1350), "H" (H-1356) and "J" (H-1359) thereto. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 475

YEA - Adams, Aliberti, Anthony, Bell, Boutilier, Carroll, D.; Cashman, Cathcart, Chonko, Clark, M.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Gean, Gould, R. A.; Graham, Gray, Gwadosky, Hale, Handy, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Kerr, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Macomber, Mahany, Manning, Martin, H.; Melendy, Michael, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nutting, O'Dea, O'Gara, Paradis, J.; Paradis, P.; Pfeiffer, Pineau, Plourde, Poulin, Pouliot, Powers, Richardson, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Sheltra, Simonds, Simpson, Skoglund, Stevens, P.; Strout, Tamaro, Tardy,

Townsend, Tracy, Treat, Waterman, The Speaker.
NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bowers, Butland, Cahill, M.; Carleton, Carroll, J.; Clark, H.; Donnelly, Duplessis, Farnum, Farren, Foss, Garland, Goodridge, Greenlaw, Hanley, Hastings, Heesch, Heino, Hepburn, Hichens, Ketterer, Kutasi, Lebowitz, Lerman, Libby, Lipman, Look, Lord, Luther, MacBride, Marsano, Marsh, McHenry, McKeen, Merrill, Michaud, Murphy, Nash, Norton, Oliver, Ott, Pendexter, Pendleton, Pines, Rand, Reed, G.; Reed, W.; Richards, Salisbury, Savage, Small, Spear, Stevens, A.; Stevenson, Swazey, Tupper, Vigue, Wentworth, Whitcomb.

ABSENT - Gurney, Parent, Paul.

Yes, 81; No, 66; Absent, 3; Vacant, 1; Paired, 0; Excused, 0.

81 having voted in the affirmative and 66 in the negative with 3 being absent and 1 vacant, L.D. 2464 was passed to be engrossed as amended by House Amendments "B" (H-1339); "I" (H-1353); "O" (H-1368); and "C" (H-1340) as amended by House Amendments "A" (H-1345), "E" (H-1350), "H" (H-1356) and "J" (H-1359) thereto and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

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

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative MELENDY from the Committee on Housing and Economic Development on Bill "An Act to Provide Skills Training for Unemployed Workers" (H.P. 1772) (L.D. 2454) reporting "Ought Not to Pass"

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

The following item appearing on Supplement No. 3 was taken up out of order by unanimous consent:

COMMUNICATIONS

The following Communication:

COMMISSION TO STUDY
A LONG-TERM DISABILITY PROGRAM
FOR THE MAINE STATE RETIREMENT SYSTEM MEMBERS

DATE: September 30, 1992
TO: Honorable John L. Martin, Speaker, Maine House of Representatives
Honorable Charles P. Pray, President, Maine Senate
FROM: Lenny Madore, Chair, Commission to Study a Long-term Disability Program for the Maine State Retirement System Members