

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

STATE OF MAINE
ONE HUNDRED AND FIFTEENTH LEGISLATURE
THIRD SPECIAL SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Friday
October 2, 1992

Senate called to Order by the President.

Prayer by the Honorable Donald F. Collins of Aroostook.

SENATOR DONALD F. COLLINS: Let us be in a spirit of prayer. Dear Lord, as we consider the important issues before us this afternoon, we ask thy guidance and wisdom in helping us make the right decisions. As we discuss and debate the various proposals help us to do it without rancor and with an understanding of our honest differences. When we finally complete our work, let us depart as friends that respect each other and as elected officials who have tried to do our very best. May thy grace be with us now and ever more. Amen.

Reading of the Journal of Thursday, October 1, 1992.

COMMUNICATIONS

The Following Communication:

**MAINE HUMAN RIGHTS COMMISSION
STATE HOUSE STATION 51
AUGUSTA, MAINE 04333**

September 29, 1992
Charles P. Pray
Senate President
State House Station 3
Augusta, Maine 04333

Dear President Pray:

I am pleased to transmit to you the Maine Human Rights Commission's Annual Report for the last fiscal year, 1991-92.

The report details a significant increase of 24.6% in the number of discrimination complaints filed in the last year and analyzes bases of charges filed, as well as types of resolutions and closures.

We would be pleased to discuss the Commission's mission, role and resources further with you at any time.

Sincerely,
S/Patricia E. Ryan
Executive Director

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

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

**COMMITTEE REPORTS
House
Leave to Withdraw**

The following **Leave to Withdraw** Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

From the Committee on **JUDICIARY** Bill "An Act to Increase Criminal Penalties on Deliberate Polluters"
H.P. 1778 L.D. 2461

Senator **GAUVREAU** of Androscoggin was granted unanimous consent to address the Senate on the Record.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As you may be aware the Bill before us in Supplement 1 dealt with the Legislation which had been submitted in the 115th Legislature by the Attorney General's office dealing with upgrading the State's Environmental Statutes pertaining to criminal violations. I'd like at the outset to thank the members of the Committee on Judiciary as well as the Joint Standing Committee on Energy and Natural Resources for the work they did on this particular legislation. And I would also like to thank members of the public and all the groups who had an intense interest in this particular legislation. As you doubtless recall from our discussions last spring, there was considerable concerns voiced by members of Maine's business community in terms of the application of the proposed legislation to them. It remains my concern and the concern, I think, of all who have worked on this Bill that the State's statutes pertaining to environmental wrongdoing are clearly inadequate and in many cases are substantially outdated. And it remains a sad fact of life that the State's environmental statutes today are no stronger in our state than they were in Alaska when the incident occurred two years ago regarding the Exxon Valdez. In discussions with the Attorney General's Office as well as with the interested parties it was decided that it was best for us not to proceed with this Legislation during this Special Session. That it was appropriate for us to focus our efforts totally upon the issue of Worker's Compensation. I am pleased to report to you that there have been ongoing discussions this summer and there are discussions going on right now pertaining to this Legislation. It is my expectation that when the 116th Legislature convenes, legislation will again be introduced by the Attorney General's Office and it is my hope at that time we will make a meaningful step forward in upgrading the State's environmental statutes. Thank you.

Off Record Remarks

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

After Recess

Senate called to order by the President.

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

**PAPERS FROM THE HOUSE
Pursuant to Resolves**

Bill "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws" (Emergency) (Submitted by The Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System pursuant to Resolve 1991, chapter 59)

H.P. 1783 L.D. 2464

Comes from the House with the Bill, under suspension of the Rules, **READ TWICE** and **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, without reference to a Committee.

Which was, under suspension of the Rules, **READ ONCE**, without reference to a Committee.

House Amendment "B" (H-1339) **READ**.

Senator **WEBSTER** of Franklin moved that House Amendment "B" (H-1339) be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I hope to save very few amendments to the Bill because the Blue Ribbon Commission did such an excellent job and they were willing to offer clarifying amendments and small technical amendments to refine their original Bill. But this particular amendment, sponsored by Representative Erwin of Rumford, makes a lot of sense to me and I'd like to go on record supporting it. I don't believe it would be that costly but it basically insures that a United States Veteran who has a service connected disability is not penalized under the Maine Worker's Compensation Act by that service connected disability. It eliminates from the measure of disability any disability resulting from a service connected condition and I'm happy to support our veterans who were disabled for that reason. I believe it's very important that we support this amendment. It's reasonable.

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

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

Senator **CARPENTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This might be an excellent amendment but this is not the time for this amendment. I haven't really studied it, I haven't had time, it wasn't before the Blue Ribbon Commission. If I'd had time to look into it, being a veteran myself I might even have co-sponsored it, but this is not the time. We'll have to do it during the next Regular Session after January 1. I urge you to vote against this amendment.

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

Senator **PEARSON:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to pose a question. Why is this not the time? This amendment is not a complicated amendment. I was able to read it in just a few minutes. It's pretty simple. Why is this not the time to do it?

THE PRESIDENT: The Senator from Penobscot, Senator Pearson has posed a question through the Chair to any Senator who may care to respond.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **WEBSTER** of Franklin to **INDEFINITELY POSTPONE** House Amendment "B" (H-1339) in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **CAHILL, CARPENTER, COLLINS, EMERSON, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, WEBSTER**

NAYS: Senators **BALDACCI, BERUBE, BRANNIGAN, BUSTIN, CLARK, CLEVELAND, CONLEY, DUTREMBLE, ESTES, ESTY, FOSTER, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, PEARSON, THERIAULT, TITCOMB, TWITCHELL, VOSE, THE PRESIDENT - CHARLES P. PRAY**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

11 Senators having voted in the affirmative and 22 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion of Senator **WEBSTER** of Franklin to **INDEFINITELY POSTPONE** House Amendment "B" (H-1339) in **NON-CONCURRENCE, FAILED**.

THE PRESIDENT: The pending question before the Senate is the **ADOPTION** of House Amendment "B" (H-1339), in concurrence.

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

Senator **DUTREMBLE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I request a Roll Call and I would like to speak to my motion. I understand the good Senator from York, Senator Carpenter's comments that we didn't have enough time with this but I think this amendment's been out for a number of hours if not all day, which is plenty of time for anybody who wished to look at it and get any information that was necessary.

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

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I may have missed something Mr. President. I'm not sure what we're having a Roll Call on. Adoption of the amendment?

THE PRESIDENT: The Chair would answer in the affirmative. The Chair will repeat the question. The pending question before the Senate is the **ADOPTION** of House Amendment "B" (H-1339), in concurrence. A Roll Call has been ordered.

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

Senator **CARPENTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Sort of to answer my good friend from York, Senator Dutremble, the time I really meant was that the veteran's haven't had time to have input. We've heard nothing from the veteran's. There seems to be some feelings that perhaps this amendment would be detrimental to their cause in seeking employment because there is a feeling among injured workers and that type that they are sort of black-balled by the industry. Therefore I think we need more input from the veterans. Thank you.

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

Senator **DUTREMBLE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I really don't disagree with that statement. I don't disagree at all, I think we have to remember that there was a definite time limit, a finality to this whole process where no more discussion could be held. We all know there may be some real serious problems with this

Bill that we're not supposed to talk about. And I guess I don't disagree with that, and I see this as one of the problems we are trying to correct. One of the serious problems we are trying to correct. And to say pass this Bill, as the good Senator from York suggests, with this major error in the Bill just doesn't make any sense. And that's what we're trying to do.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I believe, like a couple of the other speakers have mentioned, that perhaps this is a good idea and perhaps this is something that we need to discuss during the next Regular Session of the Legislature by the numbers that will serve in the next Session of the Legislature. But basically what we have before us this evening is the Blue Ribbon Commission Worker's Comp. Report, which we all agree had to be done. It was a bipartisan commission appointed by the Governor and the Speaker and the President of the Senate and we all agreed that we had to put together the Blue Ribbon Commission. Now I think it's up to us to accept that Blue Ribbon Commission's report. Granted there are ideas that are probably going to need to be redefined. We have plenty of time to do that when the new Legislature convenes, but right now I believe it is up to us to show our faith in this Blue Ribbon Commission and accept their report without amendments, even though they might be good ideas. There are many of us on the Republican side that would have liked to offer amendments to this Bill but we declined to do so because we were trying to keep faith in an agreement that we felt we had, which is acceptance of the Blue Ribbon Commission Report without amendment.

THE PRESIDENT: The Chair would advise the Members that the pending question is the **ADOPTION** of House Amendment "B" (H-1339). Because it will be a long day and a long evening the Chair will attempt to keep comments to the pending question. The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator **CLARK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In an attempt to affirm our acceptance of the Blue Ribbon Commission's report and our role as legislators, more precisely as Senators of the State of Maine, in this process, I can only speak for myself. I do not speak for my caucus. I voted, as did all of us, to subscribe to and support the efforts of the Blue Ribbon Commission. We have received their report, it was incorporated into a Bill and that Bill has been measurably amended with the blessing of the Blue Ribbon Commission and with the acknowledgment that if there were more time, that there would be further alterations, changes, modifications and maybe simply technical language or drafting changes to the Bill. If, in this Legislative process, the Senate of Maine has an opportunity to improve on the amended original Bill, which we have in fact accepted, then it behooves us, for if nothing other than efficiency purposes and cost effective purposes to do it now before the Bill is engrossed. It has been suggested by the good Senator from York, Senator Carpenter, that the veteran's have not had an opportunity to respond to this amendment. I gently differ with that fine gentleman. The veteran's, in a formal way, in a public hearing have indeed not had that opportunity. But the veteran's have been on the phone already,

supporting this amendment to me, and I have loose lips that can document their calls.

We have a responsibility as Legislators and Senators of Maine, to involve ourselves in the legislative process. We are not all made from the same mold. We do not all represent the same composition of constituents. Nor are we alike, as rubber stamps, even the rubber stamps that are provided by State Government for our use differ. They may be the same style and shape but they differ in name and in district. While my good friends across the political aisle may accept their role as uniform "rubber stamps", no personal aspertions intended, the members of this side of the aisle which I represent, feel that this is the opportunity, this is the time regardless of the circumstances, to address obvious areas which may unwittingly and unintentionally discriminate against disabled veterans who are employed in the work places across the state. Surely, we have time for, if nothing else, for that class of potential and existing workers. Those very people, who in large measure, exhibit disabilities who are in the service of our country. I submit that we can do no less than adopt this amendment. Thank you.

THE PRESIDENT: The pending question before the Senate is the **ADOPTION** of House Amendment "B" (H-1339), in concurrence.

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BALDACCI, BERUBE, BRANNIGAN, BUSTIN, CLARK, CLEVELAND, CONLEY, DUTREMBLE, ESTES, ESTY, FOSTER, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, PEARSON, THERIAULT, TITCOMB, TWITCHELL, VOSE, THE PRESIDENT - CHARLES P. PRAY**

NAYS: Senators **CAHILL, CARPENTER, COLLINS, EMERSON, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, WEBSTER**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

22 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, House Amendment "B" (H-1339) was **ADOPTED**, in concurrence.

House Amendment "I" (H-1353) **READ**.

Senator **CAHILL** of Sagadahoc moved that House Amendment "I" (H-1353) be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

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

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CAHILL** of Sagadahoc to **INDEFINITELY POSTPONE** House Amendment "I" (H-1353) in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BERUBE, BRANNIGAN, CAHILL, CARPENTER, CLARK, COLLINS, DUTREMBLE, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, MILLS, PEARSON, RICH, SUMMERS, THERIAULT, TWITCHELL, WEBSTER
 NAYS: Senators BUSTIN, CLEVELAND, CONLEY, ESTES, ESTY, GAUVREAU, MCCORMICK, TITCOMB, VOSE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senator BOST
 RESIGNED: Senator BRAUN

23 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion by Senator CAHILL of Sagadahoc, to **INDEFINITELY POSTPONE** House Amendment "I" (H-1353) in **NON-CONCURRENCE, PREVAILED.**

Off Record Remarks

House Amendment "O" (H-1368) **READ.**

On motion by Senator COLLINS of Aroostook, House Amendment "O" (H-1368) **INDEFINITELY POSTPONED** in **NON-CONCURRENCE.**

House Amendment "C" (H-1340) **READ.**

House Amendment "A" (H-1345) to House Amendment "C" (H-1340) **READ.**

Senator COLLINS of Aroostook moved that House Amendment "A" (H-1345) to House Amendment "C" (H-1340) be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE.**

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

THE PRESIDENT: The pending question before the Senate is the motion by Senator COLLINS of Aroostook to **INDEFINITELY POSTPONE** House Amendment "A" (H-1345) to House Amendment "C" (H-1340) in **NON-CONCURRENCE.**

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT.**

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BERUBE, BRANNIGAN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, MILLS, PEARSON, RICH, SUMMERS, THERIAULT, TWITCHELL, WEBSTER
 NAYS: Senators BUSTIN, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, MCCORMICK, TITCOMB, VOSE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senators BOST
 RESIGNED: Senator BRAUN

23 Senators having voted in the affirmative and 10 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion by Senator COLLINS of Aroostook to **INDEFINITELY POSTPONE** House Amendment "A" (H-1345) to House Amendment "C" (H-1340) in **NON-CONCURRENCE, PREVAILED.**

House Amendment "E" (H-1350) to House Amendment "C" (H-1340) **READ.**

Senator CAHILL of Sagadahoc moved that House Amendment "E" (H-1350) to House Amendment "C" (H-1340) be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE.**

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

Senator ESTY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would ask that you would support this amendment and vote no regarding indefinite postponement. This amendment addresses a number of concerns that came from the Labor Management Ad Hoc Committee. I'm very pleased that this amendment does not offer any additional cost but simply fills gaps that exists or clarifies information that the Blue Ribbon Commission Amendment or original Bill did not address or did not clarify completely. Again, I stress this does not increase cost but improves this Bill and addresses many of the concerns of the Management Labor Ad Hoc Committee. I think it's an important amendment to add to make sure this worker's compensation Bill and this new system works better. So I would ask that the Senate support this and I would also ask for a Roll Call please.

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

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

Senator BALDACCI: Thank you Mr. President, Ladies and Gentlemen of the Senate. Mr. President, I'd like to pose a question through the Chair to any Member of the body who would care to respond. If they could succinctly explain to me the objections with this particular amendment as it pertains to significant or substantive reforms in worker's compensation I would appreciate it very much. Thank you.

THE PRESIDENT: The Senator from Penobscot, Senator Baldacci has posed a question through the Chair to any Senator who may care to respond.

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

Senator COLLINS: Thank you Mr. President, Ladies and Gentlemen of the Senate. Just to be sure that I have the right amendment I would inquire as to whether it is House Amendment "E" to House Amendment "C".

THE PRESIDENT: The Chair would answer in the affirmative.

Senator COLLINS: Thank you Mr. President, Ladies and Gentlemen of the Senate. It seems to me that this is indeed an important amendment that does affect a substantial number of things in the Bill. Among those are a different type of measurement standard for partial incapacity benefits, and this would suggest a study of functional capacity as opposed to the whole body method and it seems to me that that particular methodology is one that is not well based on medical and scientific methods. It modifies the maximum benefit provision and will increase cost there and it is more generous than the Blue Ribbon Commission report. The escalation of \$441.00 would begin in this case on July of this year and it seems to me that those are concerns that we ought to be truly concerned about. The total benefits in this package are rather minimal to say the least and are measured somewhere in the neighborhood of 12 points. I expect that many business people were expecting 25 and it seems to me that we ought not to tinker with parts that are in fact going to increase costs and decrease savings. So I would suggest that this is not a good amendment to adopt. Thank you.

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

Senator ESTY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd be happy to further elaborate on what I had said regarding those two issues that were brought up by the good Senator from Aroostook, Senator Collins. Regarding the functional capacity issue this amendment certainly does not mandate that the Labor Management Board use that as any kind of benchmark. The original recommendations as well as the Bill and the Amendment regarding functional capacity does not preclude the Labor Management Review Board from using functional capacity in making decisions. It does not preclude it and this amendment, House Amendment "C" does not change that. It does ask that functional capacity be looked at over the next two to three years. Be studied simply to make recommendations back to a future legislature. I think that makes a good deal of sense since the Blue Ribbon Commission itself did not preclude that, found that it had some merit.

Number two, regarding the maximum benefit level issue that Senator Collins had brought up. This amendment does not increase those maximum benefit levels. That would certainly increase costs. This amendment simply goes back to the original wording of the Blue Ribbon Commission's draft recommendations. The words in which the actuarial findings were based upon. How could it possibly increase costs? It simply refers back to the original words of the Blue Ribbon Commission and their recommendation and the Bill that's in front of you. I'm simply asking to keep that same language in the Bill. Thank you.

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

Senator CARPENTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. The way I read the Bill it does increase costs and was not the way the Blue Ribbon Commission intended it to be. \$441.00 will begin next year, the maximum would be 112% rather than the 90% intended by the Blue Ribbon Commission and included in the Michigan law. Thank you.

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

Senator BALDACCII: Thank you Mr. President, Ladies and Gentlemen of the Senate. I am not going to conduct an extensive debate of this particular matter or any other matter before us but I think we're all intelligent enough people so that we can go through this and see if, in fact, there are any boogey men or not. I am genuine in asking questions to find out if, in fact, there is anything substantive here. Not being a Philadelphia attorney, not being a Maine attorney I refer to the Statement of Fact which is probably a mistake but I'm going to refer to that and if something is totally out of whack I'd like to be corrected. Before I vote for something, I want to make sure that, in fact, it's not going to do any more than what the Statement of Fact says. According to the Statement of Fact on page 4, filing number H-1350, it first specifies the expedited procedure for confirmation of the Board. Two specifies that a member of the Board may not be a service provider. So far I haven't run into anything too controversial yet. Number 3 says it specifies that the confidentiality policy of the Worker's Compensation Board must make records available on a need to know basis. Nothing yet. And then 4 says it requires that the Board collect and analyze data to determine the advisability of establishing a functional capacity standard to be used for

determining eligibility for benefits. This leaves it to that particular Board to study and analyze the data as it comes in relating to what the Blue Ribbon Commission recommended. Then it provides for confirmation and eliminates the changes in language concerning maximum benefit levels contained in this amendment. I would like more clarification from any Member of the Body to explain to me, are we increasing the overall cost of this package or is this just a regurgitation of language that's already before us somewhere. And then item 6 is the confirmation of the Maine Mutual Funds Insurance Company, Inc. and then providing for review and confirmation of the Maine Employers Mutual Insurance Company and then in number 8 it says it requires the Board to study. In my mind, of these statement of facts the concern that I would have would be on number five as to whether it in fact was increasing the cost of the package with its amendments or whether its just a statement of what's in the package. That's the only point in my mind that needs to be clarified before I vote in favor of this. Unless there is something else I've missed. Thank you.

Off Record Remarks

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

Senator KANY: Thank you Mr. President, Ladies and Gentlemen of the Senate. In answer to the good Senator from Penobscot's question, I just would like to refer you to the fiscal note on the Bill. It just says this amendment will increase cost to the legislature as a result of the additional expedited review and confirmation of the incorporators and Board members of the Maine Employers Mutual Insurance Company. These additional costs can be absorbed within existing budget resources. To reiterate what our good President, President Pray of Penobscot said, that the fiscal note indeed too was drafted by our fiscal staff. If there were an increase in benefits that would be included in the fiscal note as it would impact the State Government with its thousands of employees and that would be reflected in the fiscal note and it is not there. Thank you.

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

Senator COLLINS: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would pose a question with respect to the statement of fact. It says in number five that it eliminates changes in the language concerning maximum benefit levels contained in the amendment. I wonder if somebody might point out what they mean when they say 'maximum benefits'. Thank you.

THE PRESIDENT: The Senator from Aroostook, Senator Collins has posed a question through the Chair to any Senator who may care to respond.

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

Senator MCCORMICK: Thank you Mr. President, Ladies and Gentlemen of the Senate. Yes, I would be glad to answer that question. The language contained in Amendment "C" comes from the Blue Ribbon Commission's memorandum of September 29. House Amendment "C" incorporates that language. Those are Blue Ribbon Commission amendments. What House

Amendment "E" does is eliminate that one particular sentence or two and goes back, thereby leaving us with the original Blue Ribbon Commission language and I reiterate the good Senator from Cumberland, Senator Esty's comment about the possible cost of that, because the actuaries report that the savings from this Blue Ribbon Commission Bill be 12% was based on that original language, so, therefore, I guess I would say to the good Senator from Aroostook, Senator Collins that House Amendment "E" puts us back in this one particular instance only to the original Blue Ribbon Commission language on which the actuarial report was based. Thank you.

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Senator McCormick of Kennebec is absolutely correct and I just want to point out to you in House Amendment "C", which is the Blue Ribbon Commission's amendment, that language which is being deleted. The original Blue Ribbon Commission Bill said that what we are referring to must be adjusted annually, but House Amendment "C", which was just amending the original Blue Ribbon Commission Bill took out the language "must be adjusted annually", and instead inserted what is already included earlier in the paragraph, the higher of \$441.00 or 90% of the State average weekly wage as adjusted annually. So that is why there is no rate increase in benefits and it's a very simple, minor thing reverting back to the original Blue Ribbon Commission Bill. Thank you.

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

Senator **COLLINS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Wasn't Amendment "C" accepted by the Blue Ribbon Commission? So we are in effect changing that and we are in effect moving up the time for readjustment and we are in effect increasing costs?

THE PRESIDENT: The Senator from Aroostook, Senator Collins has posed a question through the Chair to any Senator who may care to respond.

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd just like to say that maybe the Blue Ribbon Commission was right the first time.

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

Senator **ESTY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. We've been working with a number of drafts from the Blue Ribbon Commission as well as from other entities. We've been working with all kinds of language. We've tried, throughout this process, to honor their intentions and stay with their intentions with language changes as much as possible and I think that we're being consistent here. Thank you.

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

Senator **BALDACC:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I am still unclear of the explanation as it pertained to Statement of fact number five. My question is, by approving House Amendment "E" to House Amendment "C", concerning maximum benefit levels contained in the amendment. It eliminates the changes in language concerning maximum benefit levels contained in the

amendment. What I have been able to ascertain is that from going from a particular procedure, as it is in House Amendment "C", they're saying in the House Amendment on page 2 they are establishing a rule of scheduled medically and scientifically demonstrated findings and the schedule must be based on those findings. I need to know in my own mind what is being done here. Is that what's being done? Thank you.

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

Senator **CARPENTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I guess the question was not directed to anyone specific. I think I can answer it now clearly, that the percent of the maximum benefit would be increased 22% under this House Amendment "E" to House Amendment "C". Thank you.

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

Senator **ESTY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to point out once again that the basis for savings regarding this whole report was based on the Blue Ribbon Commission draft that we had seen. We've had two actuarial studies regarding that, they've been in the area of 12% to 13% right away with the potential of 30% to 40% additional savings. With the language that we were dealing with before. I'd love to have the good Senator from Sanford the actuarial data that would support that as well as any other information regarding this. It sounds good but it's not as accurate as it could be.

THE PRESIDENT: The Chair would advise the Senator that the Rules require that we refer to the Senators by the County in which they reside. The Chair recognizes the Senator from York, Senator Carpenter.

Senator **CARPENTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'm not talking about the total actuarial savings on the total Bill. I'm talking about the annual escalation of \$441.00, the maximum benefit under this amendment, would go from 90% to 112%. I think that's a 22% increase. Thank you.

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

Senator **BALDACC:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to pose a question through the Chair to any Member of the Body who may respond. I have, I believe, the original Blue Ribbon Commission Report here. On page 37, under section 211, it says maximum benefit levels. "Effective January 1, 1993 the maximum weekly benefit payable under this section is \$441.00, or 90% of State average weekly wage, which ever is higher. Beginning on July 1, 1994 the maximum benefit level must be adjusted annually utilizing the State average weekly wage as determined by the Bureau of Employment Security." This is what I have here, what I would ask is what does House Amendment "E" to House Amendment "C" do to this?

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

Senator **ESTY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This House Amendment "E" to House Amendment "C" leaves that language intact. Senator Baldacci, the good Senator from Penobscot, that's the language that came from the Blue Ribbon Commission, that's the language in the

Bill, that's the language that I think should be left there. It will not change it one bit. It's the language that all of the estimates have been based upon. I think that that's the language that should stay. Thank you.

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

Senator COLLINS: Thank you Mr. President, Ladies and Gentlemen of the Senate. I think that the actuarial work that was done on this was based upon a price of \$441.00 and not the escalation of that number. I think that this change also moves the date to July of 1993 rather than the date referred to a moment ago. So there is an escalation which occurs here. It seems to me that it will affect the savings in this Bill. It's a difference, quickly calculated, of about \$35.00 per week. Thank you.

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

Senator BALDACCI: Thank you Mr. President, Ladies and Gentlemen of the Senate. I really need to keep this as simple as possible for my simple mind. But I am looking at page 37 of the Blue Ribbon Commission Bill here, and I'm seeing this language here that we're talking about putting back in somehow got out. We're talking about putting that language back in. The good Senator from Aroostook, Senator Collins has said the change in date to 1993 is in this amendment, and I'm not a legal person and I think that needs to be addressed. But if it's not different from what's here, I don't have a problem with that as long as it's what's here before us in the original Blue Ribbon Commission Report. If it's been taken out somehow and put back in, I think that's keeping in good faith with what the Blue Ribbon Commission had deliberated on. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator CAHILL of Sagadahoc to **INDEFINITELY POSTPONE** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, PEARSON, RICH, SUMMERS, THERIAULT, TWITCHELL, WEBSTER

NAYS: Senators BALDACCI, BERUBE, BRANNIGAN, BUSTIN, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, TITCOMB, VOSE, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senator BOST

RESIGNED: Senator BRAWN

17 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion by Senator CAHILL of Sagadahoc, to **INDEFINITELY POSTPONE** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**, **PREVAILED**.

House Amendment "H" (H-1356) to House Amendment "C" (H-1340) **READ**.

Senator CAHILL of Sagadahoc moved that House Amendment "H" (H-1356) to House Amendment "C" (H-1340) be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

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

Senator KANY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I urge you to vote against the pending motion and I ask for a Division and wish to speak to the motion. Once again we have an incident in which the Blue Ribbon Commission was right the first time. After listening to some people express reservations about the ability of our important Maine Employers Mutual Insurance Company to come on line by January 1, we asked the Blue Ribbon Commission if they would go along with allowing the current old, broken, residual market mechanism to continue for a couple of months if necessary and if they were willing. When our Committee looked at that in depth again, we decided that that was not a good recommendation, that we really need to begin promptly on January 1. We need to get moving on that. It was just a complicated amendment to allow the old residual market mechanism to be in place for a couple of months. It would be much more expensive for our poor employers who need great relief. There is no reason in the world why we can't get the Mutual Insurance Company operating by January 1, and we have made a number of other arrangements to expedite that procedure. Primarily, by having the Superintendent of Insurance set rates the first year and doing some other things. It will be much cleaner, much better, much less complicated and much better for our employers when they can take control and will take control of their insurance mechanism beginning January 1. I do urge support of this amendment and opposition to the pending motion for indefinite postponement. Thank you.

Senator KANY of Kennebec requested a Division.

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

Senator COLLINS: Thank you Mr. President, Ladies and Gentlemen of the Senate. I pose a question to the good Senator from Kennebec, Senator Kany. Was it not the Committee on Banking and Insurance that suggested the change because they felt that this operation could not get running by the first of January? Did not that Committee then incorporate and seek the approval of the Blue Ribbon Commission for this item? I don't know that I'm terribly upset about this but I'd like to see us going. I'm kind of confused at the way we reverse ourselves so quickly. I surely wasn't at the meeting where we changed our minds. Thank you.

THE PRESIDENT: The Senator from Aroostook, Senator Collins has posed a question through the Chair. The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator KANY: Thank you Mr. President, Ladies and Gentlemen of the Senate. The truth of the matter is many of us never thought that it was a good idea to use the old residual market mechanism. We were, instead, just listening to those who knew very little about what we would be doing with our new Mutual Insurance Company. In listening to their concerns we made a recommendation which upon examination is really not in the best interest of the State's employers. So I hope that you will go along with this amendment and have a clean break from that old, broken down, very broken residual market mechanism so that we can begin with a greatly improved mechanism which will be the Maine Employers Mutual Insurance Company, in which the employers will be in control. It will be their Board, with some public members and

there will be industry divisions run by Boards made up primarily by employers with some labor members on them to finally focus on safety and return to work and all the things that are so important. Hopefully, they will thereby soon have the same success that many of the self-insureds have enjoyed. I believe we owe it to our employers to get this going quickly and not to complicate matters by having some broken down old residual market mechanism allowed to continue in place beyond its life. Thank you.

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

Senator **CLARK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would pose a question through the Chair. My concern with reference to this proposed amendment is for the employers of the State who might be held liable for any accrued or, no pun intended, residual cost or obligations accrued over the years through their voluntary and mostly involuntary participation in the residual pool. Will any of those lingering costs be transferred to the new Mutual Insurance Company? And will the employers of our state be held liable for those if the answer is yes? Thank you.

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In the new Mutual Insurance Company, employers will be entirely responsible for their own insurance mechanism, entirely responsible for the new Mutual Insurance Company. From the years 1988 through 1992, that's the broken down residual market mechanism we'll have to get rid of, assuredly on January 1, if we pass this mechanism, it has been faulty, poorly governed, much conflict of interest abounding with the insurance industries organization being the plan manager and primarily governed by insurance carriers instead of the important employers. Since it has been governed so poorly there have been deficits accruing from those years and those deficits, as they continue to occur from claims arising from the year 1988, for example, the employers of the State including employers that are now in the new Mutual Insurance Company, will be responsible for that old deficit, arising from that old claim year and from the years 1989 through 1992. They will share in a 50% manner with the insurance industry any deficits arising from those years and deficits arising in the future from those old years. That is not going to change. We did not change that sharing of responsibility for future deficits from the old years but we are creating an entirely new mechanism that's Mutual Insurance Company owned, operated and basically run by the employers of the state and they will have control, finally, over their insurance mechanism. They should benefit greatly from that. If, within a particular industry division, there is a deficit, then that deficit will be entirely paid by that particular industry division, with the single exception of the high risk division. If there are future deficits there, then that deficit would be paid by the high risk division itself up to an equivalent amount of what the premium was for that year and that would be shared by others. This is a greatly, greatly improved residual market mechanism from what we have now and I hope that we can begin it promptly on January 1. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **CAHILL** of Sagadahoc, to **INDEFINITELY POSTPONE** House Amendment "H" (H-1356) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**.

A Division has been requested.

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

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

14 Senators having voted in the affirmative and 17 Senators having voted in the negative, the motion of Senator **CAHILL** of Sagadahoc to **INDEFINITELY POSTPONE** House Amendment "H" (H-1356) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**, **FAILED**.

House Amendment "H" (H-1356) to House Amendment "C" (H-1340) **ADOPTED**, in concurrence.

House Amendment "J" (H-1359) to House Amendment "C" (H-1340) **READ**.

Senator **CAHILL** of Sagadahoc moved that House Amendment "J" (H-1359) to House Amendment "C" (H-1340) be **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

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

Senator **BALDACCI:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Again, I'm trying to find out what the rational is. According to the Statement of Fact this amendment adds to the provision on confidentiality of records, that they be made available on a need to know basis for certain limited research purposes. Is this something that costs something, decreases the overall benefits of the package or is this something that is a problem? I am at a loss for determining why this has got a problem to it. Thank you.

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In answer to the good Senator from Penobscot, Senator Baldacci's question, there is no fiscal note attached and it certainly will not change benefits or costs overall to the system. I support this amendment because while we are creating a positive confidentiality statute I think it is important to include the wording of this amendment to assure that the medical or occupational safety and health research purposes that the information, of course not the claimants name, but the information could be made available for those purposes. One thing we found out, as we've examined the system in the last couple of years, is how little information we have about outcomes particularly, directly related to our work place injuries. We really could benefit from more studies and research about the medical aspects of our worker's comp system and I hope that this amendment does pass just for that reason. We need to encourage such occupational related research. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. While what the good Senator from Kennebec, Senator Kany, says could be true, also included in the medical and occupational safety and health research are a couple of other words. Including "legitimate academic public policy and social science" needs as well. I guess the fear I would have is that this would perhaps be opened up a little too wide and invade on the confidentiality of some injured workers.

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Many people did not realize, and the Blue Ribbon Commission did not realize, that currently under our worker's comp Commission those records are entirely open. In other words, an employer, even though they are not allowed to exhibit any discrimination against an injured worker or claimant, can call the Worker's Comp Commission and ask if so and so has been a claimant. Those records are entirely open and I think that's terrible. It encourages discrimination. No wonder our injured workers have buttons that say "Jobs not Discrimination". Street smart, potential employers know that they can do that. Second, it also encourages ambulance chasing lawyers, if there are any, who are knowledgeable enough, street smart enough to know that they can just call and get the names of all those claimants. So I am glad that we are providing provisions on confidentiality but I do believe that this particular amendment is helpful in a positive, public policy sort of way, of making certain that that information, not about the claimant's name clearly, but about that information so that we can improve the system, lower the parameters of the entire Worker's Compensation Commission System and hopefully prevent disability and pain and suffering for Maine people as well as lowering the costs, these horrible horrible costs, to our important Maine employers. Thank you.

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

Senator **CARPENTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I think that the reason that this amendment is being opposed, Amendment "J" to Amendment "C", is really just the term public policy in the amendment. They are very concerned, and I'm very concerned that the terms public policy may open records beyond what was intended by the Blue Ribbon Commission. It's just a little too general. Thank you.

Senator **ESTES** of York requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CAHILL** of Sagadahoc, to **INDEFINITELY POSTPONE** House Amendment "J" (H-1359) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**.

A Division has been requested.

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

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

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator **CAHILL** of Sagadahoc to **INDEFINITELY POSTPONE** House Amendment "J" (H-1359) to House Amendment "C" (H-1340) in **NON-CONCURRENCE, PREVAILED**.

Off Record Remarks

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "C" (S-796) to House Amendment "C" (H-1340) **READ**.

Senator **CAHILL** of Sagadahoc requested a Division.

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

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I just want to let

people know what this amendment is all about. I have worked since the Blue Ribbon Commission presented to the State and Local Government Committee, I have been working with the Commissioners and specifically Commissioner Hathaway to repair what I consider is the damage being done to the employees holding that position under the Commission, under the Worker's Comp Commission. For the transition language to go to the Worker's Comp Board and we made an agreement, and it is contained in Amendment "C", House Amendment "C", that allows the personnel laws or the civil service laws to prevail in that transition. The original Blue Ribbon Commission had terminated all the employees of the Commission on Monday and rehired them back on the other day. That does not follow state personnel laws. So that is acceptable, but in the changing of that amendment and in coming to that agreement the Blue Ribbon Commission apparently agreed among themselves, not with me, to also change the other part of the Bill that really would declassify down to what I call the third level of government, the level that we have always in this legislature not allowed to be unclassified and that's the Assistants to the Deputies. What this does is restore, so that the personnel laws prevail and it also gives the Board permission to make the transition at the appropriate time. In point of fact, under the current personnel laws you can get rid of a position, you can leave a position vacant, you can add a position, you can do all of those things and they should be done at the appropriate time. So what this Bill does is try to change that process. Thank you.

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

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

Senator **BALDACCIO:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would pose a question through the Chair to any member of the body that may care to respond, but before I vote on this piece of legislation it is my understanding that all this does is it, in the Blue Ribbon Report it leaves it at the discretion of some authority to appoint these people and presently they are classified employees and in this transition period this amendment proposes to return them to classified employees for which the Blue Ribbon Commission said they would not be classified as classified employees. That's my first question. The second question I have, if that is the issue, is there in regards to the people that are paying worker's comp. premiums in doing that? Those are my two questions. Thank you.

THE PRESIDENT: The Senator from Penobscot, Senator Baldacci has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Yes, I will attempt to answer that. Yes, I do think it has some. I'll take the last question first. It does have something to do with the transition of how Worker's Comp benefits and the whole system is going to be administered and how it serves those injured workers. The way the Bill would be, if it remained the same, you would have absolute chaos because you didn't have any transition between the Commission, the Commission

being run as it is under present law, and the Board. If you have chaos within personnel ranks, the typists who type the decisions, the people who make the phone calls, the people who receive the phone calls, all of that sort of thing does get very messed up. The personnel laws have been there for a long, long time and that's the kind of order that we use in order to make those kinds of transitions and I think they should stay. The first part of your question was whether it keeps them as classified employees, yes. Those employees who are currently classified would remain classified, those employees who are currently unclassified would remain unclassified. It restores it to what it is, it gives permission to the Board to do what they will with those positions. There's a difference here between telling a person who holds a position, or a classification, that on one day they have a job and that they are terminated, and some people call that fired, and the next day can take that same work force that you have just terminated and say to a few of them, "well, we like you, you and you, but we don't like you, you and you". That is not a fair system. Civil service laws allow you to do that kind of transition and should be used. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I just want to clarify one thing. I think the good Senator from Kennebec, Senator Bustin, said that she, in working with members of the Blue Ribbon Commission, had an agreement that this language would be included. It's my understanding that the Blue Ribbon Commission did discuss this language but rejected it. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Just to clarify what I said, what I said was I worked with the Commission and specifically Commissioner Hathaway, and the part that we agreed on is under A9 sub 5. That's already in amendment "C", House Amendment "C". That is not what this is affecting. It is affected A8 sub 6. Thank you.

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

Senator **BALDACCII:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I guess all I want to understand in my mind is that what is being proposed with the amendment that is being offered is a restoration to classify those who have been unclassified, that there is no overall increase in worker's compensation insurance premiums to do what's being proposed. We have transitioned Department of Education employees when we created the system wide services or the BPI's. We did it when we did BIDE. I mean other areas, I understand that, but is there an overall cost to the worker's compensation insurance premium because of what you are proposing to do? That's my question. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. No there is not.

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

Senator **COLLINS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. When and if we get to the point where we accomplish all the things with

this Bill, we will have a new Worker's Compensation Board. They will be the governing body and they will be made up of employers and employees. One of the things that it says in the make up of the rules and regulations of government requirements are the Compensation Board has the ability to hire people and has the ability to organize a staff. What this does, it probably puts under classified rules, the general counsel for example, that the Board designated to select, his assistants. It would also include the directors of the various bureaus. If you want the Compensation Board to make these appointments, and run this show, it seems to me that you ought to leave that the way they have it set up, which is in a declassified position, as opposed to the rest of the employees in the Commission who are classified, but not these. Thank you.

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

Senator **BALDACCII:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to pose an additional question through the Chair to any member of the body who may care to respond. The people that are now working under this structure, once this new structure is created, they become possibly new employees. What happens to the time that they have served under this new structure as it leads to their retirement or is that crossed out and they begin again?

THE PRESIDENT: The Senator from Penobscot, Senator Baldacci has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. The good Senator from Penobscot, Senator Baldacci has very aptly pointed out one of the very grave problems that result in House Amendment "C" as it exists. It will create that kind of a problem. That's why if you go with this amendment that I have presented it will give that transition language and it will also clearly give discussion and approval of any new staff structure, would be appropriate and would be reasonable with the new board. That does not preclude them from setting up their own structure, it just asks that they do it within the personnel laws. That seems reasonable, because it is a government agency that is going to be operating. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **BUSTIN** of Kennebec, to **ADOPT** Senate Amendment "C" (S-796) to House Amendment "C" (H-1340).

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BALDACCII**, **BERUBE**, **BUSTIN**, **CLEVELAND**, **CONLEY**, **DUTREMBLE**, **ESTES**, **ESTY**, **GAUVREAU**, **KANY**, **MATTHEWS**, **MCCORMICK**, **MILLS**, **PEARSON**, **TITCOMB**, **VOSE**, **THE PRESIDENT - CHARLES P. PRAY**

NAYS: Senators **BRANNIGAN**, **CAHILL**, **CARPENTER**, **CLARK**, **COLLINS**, **EMERSON**, **FOSTER**, **GILL**, **GOULD**, **HOLLOWAY**, **LUDWIG**, **RICH**, **SUMMERS**, **THERIAULT**, **TWITCHELL**, **WEBSTER**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

17 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion by Senator BUSTIN of Kennebec, to ADOPT Senate Amendment "C" (S-796) to House Amendment "C" (H-1340), PREVAILED.

On motion by Senator VOSE of Washington, Senate Amendment "D" (S-797) to House Amendment "C" (H-1340) READ.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Vose.

Senator VOSE: Thank you Mr. President, Ladies and Gentlemen of the Senate. The present Bill that's before us, in fact, takes away an employees right to have an employer pay for the attorney. It allows the employer and insurance companies to pay anything they wish to their legal staff, or their lawyers. However, it places a cap on the employee and the cap, I'm sure, was intended to make sure the employee wouldn't have to pay an exorbitant price for a lawyer. However, if that employee wishes to have a lawyer of his or her choice to represent them, even though it may cost a little bit more money than the present cap, under this Bill they would not be allowed to do so. This amendment removes that cap, allows the employee to hire a lawyer of his or her choice. It also provides a way that if that employee thinks that lawyer is charging an exorbitant fee, it may appeal to the Board for an adjustment one way or the other. That's it, in essence, exactly what the Bill does. Thank you.

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

Senator BALDACCI: Thank you Mr. President, Ladies and Gentlemen of the Senate. I have a big problem with this particular amendment, in that in my mind what has been proposed is that it lifts a lid of a fee charged to injured workers and a petition to a Board, and it lifts that lid so that people, attorneys or whatever, can charge whatever they wanted to. I have a problem with that in realizing the difficulties that injured workers have, I think that any attempt to remove a lid or cap on fees of attorneys and what they can charge to the injured workers, to me, is opening the door to an excess and possibly placing the injured worker at a disadvantage and then allowing him to petition the Board to say it may be exorbitant, it may be not. So I feel very strongly about this particular proposal and I would encourage people to vote against it. Thank you.

Senator BALDACCI of Penobscot requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Vose.

Senator VOSE: Thank you Mr. President, Ladies and Gentlemen of the Senate. I understand the good Senator from Penobscot's concern. However, there is nothing to say that the employee does not have to hire, or can not hire, a lawyer that will be willing to work under the present cap. But it does prevent that employee from hiring a lawyer that may be a little bit more expensive but of better quality, so to speak. And probably they have a better chance of winning his or her case. And that's it in essence. The protection is there if the employee figures that it's too much and wishes adjustment, he can so appeal to the Board. Also, he can hire an attorney willing to work under the cap. Thank you.

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

Senator CARPENTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. Let's get right down to basics, this really isn't an employees Bill, it is a trial lawyer's early Christmas present. And it does significantly reduce the cost savings of this Bill. Please defeat it. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Vose.

Senator VOSE: Thank you Mr. President, Ladies and Gentlemen of the Senate. The good Senator from York has said that this does decrease the cost savings of the Bill, I would pose a question through the Chair. Would the good gentleman explain how that is done?

THE PRESIDENT: The Senator from Washington, Senator Vose has posed a question through the Chair. The Chair recognizes the Senator from York, Senator Carpenter.

Senator CARPENTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. It's done in several ways. This amendment repeals the Board's authority to regulate attorney's fees, sets fee schedules and sets percentages for lump sum payments. Thank you.

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

Senator BUSTIN: Thank you Mr. President, Ladies and Gentlemen of the Senate. I've always supported caps on lawyer's fees. That was when we had the system where injured workers who did not have money available to them could have a lawyer, paid up front by the State. We did that for a very good reason, we did it because we knew that if an injured worker was out on the street, and keep in mind, that workers don't get injured unless they are in some kind of a job that has the potential of injuring them, Carpal Tunnel Syndrome, painting bridges, any number of things that could cause an injury. For the most part we are talking about workers who are not on the high end of the income scale. That's why in the State of Maine we thought it proper that the comp system would take care of the lawyer's fees for the injured worker, because they did not have the availability of the money resource to hire that lawyer. Now, under this present Bill, what we're doing is taking that protection, yes, protection folks, interestingly enough there are some people in this world, because they do not have the resources available to them, who need protection, because we are taking that protection away from the injured worker, we need to put that injured worker on the same playing field as the other two people or two entities that the injured worker is up against. The employer and the insurance company. The employer and the insurance company are not capped, they are not limited as to what price lawyer they can hire. Now I happen to think that we should not require what we are requiring in this bill, i.e. asking injured workers who now may not have any money coming in now because their claim has been controverted. They may not have any money coming in, may in fact be on the welfare system to try to find money to hire a lawyer. I in fact think that we should be paying for that. But because we aren't and because I believe that if this system works the way people think it's going to work, with the way the Blue Ribbon Commission thinks it's going to work, then the mediation is going to take care of all the cases. That this wonderful system is now going to exist, we're not going to need very many lawyers, are we? We're not going to need very many.

Shouldn't the employee have the same right and the same ability, if they can find, beg, borrow or steal money to hire a lawyer, to hire the lawyer that they want? If we're not going to cap the employers and the insurers we ought not to be talking about capping the employee. Thank you.

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

Senator **BALDACCI:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I don't know if a Division has been requested but I would request a Division on this particular matter. The issue the good Senator from Kennebec, Senator Bustin has raised, I believe to be erroneous because if we look at a similar practice in medicine, there's a Bill that constantly comes to this body called Medicare Assignments. What that states is that the doctor's that aren't taking Medicare cases have to take Medicare cases. They can't reject those. I liken that parallel because of the complaints I hear from physicians of the reimbursement rate. Here being proposed is a lid, is a structure, saying this is how much attorneys can charge injured workers. Now what the argument is, is the injured workers won't be entitled to the best legal counsel. If that legal counsel that exists in the State of Maine does not represent injured workers before a petition of the Worker's Comp. Commission, there ought to be a bill in this legislature to require them to take it, like there is a Bill to require physicians to take Medicare assignments. There ought to be a bill to do that because those injured workers now are being forced to pay for their own legal fees and if they are, there is going to be a lid on those legal fees that can be charged to them. If they're not taking them there's going to be a law that says they have to take them. I'm getting sick and tired of being run around by little groups when it's the injured workers and the employers that have been ignored in this entire process. That's the issue that rests here today. If you want to fight for a welfare bill for attorneys and you want to put in issues to protect attorneys and making sure attorneys are in that proceeding then you put a bill in to require them to take those cases. That's the bill that should be in this body, after this legislation goes through. Thank you.

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

Senator **DUTREMBLE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. This idea for attorney's fees, or the way it came out of the Blue Ribbon Commission is one of the few items in here that are so blatantly offensive to me. We've dealt with this issue of attorney's fees a number of times in the last ten years and I, like others, have always tried to get to the point where we remove the costs of attorney's fees as much as possible. But whenever we did that we always tried to maintain the idea that worker's comp insurance system was a no fault system. The injured worker can't sue his employer for unsafe conditions or for negligence in turn for the worker's comp system. The injured employee, the injured worker, needs to have an attorney to represent them every time a case is litigated. What's so blatantly offensive here is how we're asking the injured worker to use up some of his own settlement money in paying for that attorney. That is blatantly unfair. There's no ands, ifs or buts about it. People have wanted to get the trial

attorneys, the cost of trial attorneys out of this so badly that we went to this final last point and in doing so we've actually gone after the worker, the injured workers. There's no question about that. And people can say no, they can shake their heads. I've worked with this system, I've worked with trying to cap the cost of lawyers, this here has gone way to the other end, way to the other side. All the years that we worked and worked this problem I always had one thing in mind, that there was disadvantages, I believe, to businesses to some degree because of the high cost. I felt the pendulum had to swing back toward the middle, well, with this particular provision, it's gone way past the middle. You've got to remember, one of the reasons that we're here today is that what goes around comes around. And this one here is really offensive and is going to hurt a lot of people and is going to come around again if this doesn't change right now. Thank you.

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

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like to correct a few things that the good Senator from Penobscot said earlier. First of all there is no law in this state to require doctors to accept Medicare payment in all cases. I know that because I've tried to get it through even in my short career in this Body last year. There was incredible resistance to it, I would be glad if this horribly unfair provision in this Bill does pass, I'd be glad to introduce a similar provision to require attorneys to accept injured workers in all cases and actually I will make a deal that if you all will vote to accept Medicare in all cases for doctors then let's do injured workers in all cases for lawyers. That actually would be a good quid pro quo. Second point, let's just stop all the lawyer bashing here, okay? It is unseemly to this Body, it is name calling, it is not productive. The reason why having a level playing field and having equal access to attorney's is important is because having someone who knows the law and can speak for you, in this process or in any complicated process, makes you equal with the highly paid insurance lawyers. I am going to support this provision because it eliminates one sentence. There is one sentence, and this sentence is the one I think is the most unconstitutional of all. It says, "an attorney representing an employee in a proceeding under this Act may receive a fee from that client only as provided in this section" and then the amendment goes on to say "only as approved by the Board". In other words this bill prohibits employees from purchasing the services of their choice. That is not fair, it does not preclude insurance companies from purchasing the services of lawyers, it does not cap the amount of money an insurance company can pay for a Wall Street lawyer or a Harvard educated lawyer. It only caps the amount an employee can pay for a lawyer. It simply tilts the playing field too much and in our system that is unfair. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. The good Senator from Kennebec, Senator McCormick echoes what I would have said, that we in fact do not have an assignment bill or statute in the State of Maine. I personally have tried to get that through when I was Chair of Human Resources Committee many times. What is abhorrent to

me about what is proposed for capping lawyers fees, and I have clients, consumers, constituents come to me and say "Why do they have to take even 30%, why do they have to take this, that or the other thing". I empathize with them and I help them with that. The fact of the matter is that in the amendment, House Amendment "C", as presented, you have the statute capping the fee. In this amendment you allow the Board to have discretion in that. As the good Senator from Kennebec, Senator McCormick has stated, you are potentially running into a constitutional problem by putting it in statute. My defense for this amendment is because I feel I have more control for those people who cannot afford lawyers under this amendment than I have under the law as presented. They have regressed, in fact, they can go back to the Maine Bar Association and, if they think their fee is exorbitant, they can also address it that way. I'm not particularly in favor of having people have to go through those routes, I would much rather have a system where everybody knows what they should and can pay and it's an established system. But I cannot abide putting a system that is unequal, putting those people who already hold the money in their hands, who already make the money, who already have money to invest and can buy the high priced lawyer and not allow somebody who has been injured to have the same ability. That's what I object to. Thank you.

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

Senator **BALDACCII:** Thank you Mr. President, Ladies and Gentlemen of the Senate. The good Senators from Kennebec have alluded to the fact that there is no law as it pertains to Medicare assignment. I don't recollect in my speech, of course I am getting old, of ever having said that. My quote was that a Bill had been introduced to do that. It wasn't that a law was passed. A bill was introduced to do that. During the hearings and debates of those types of issues we found out that 88% of the physicians already took Medicare on assignment. I could only hope that 88% of the lawyers take Worker's Comp at the cap and at the lid that's being established by the Commission. I hope that they only perform as well, but I have to say in repetition that what is being proposed here is to lift the lid on attorney's fees as it pertains to injured workers. Yes, lift it so we can go up to \$500.00 an hour, lift it so we can go up to \$1,500. an hour. Why shouldn't the injured worker have the right to an attorney at a reasonable rate? Why shouldn't that injured worker be protected since what's being proposed is that they have to do it on their own. I just think that we, once in a while when we're trying to help people, we may actually end up hurting them. I think in this proposal the intention of helping may in fact end up really hurting and I think that what I would like to see done is for this amendment not to be considered. Thank you.

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

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

Senator **DUTREMBLE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would just like to repeat what I said earlier. That the idea of an injured worker winning his case and having to pay an attorney is blatantly offensive and unfair. I

don't know if this amendment addresses that, I really don't. But I have a question and I would hope that maybe some of the attorneys or some of the people who think they know as much as the attorneys would like to answer. Is due process denied if this amendment doesn't pass?

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I just felt the need to get up and oppose this amendment because here we have a terribly broken system. Worker's comp is in trouble nationwide and it is generally acknowledged that Maine has the worst system of all. It serves no one well, not our injured workers, not our employers, maybe a few of the providers, but almost no one else. And we haven't found that we have an absence of competent attorneys willing to serve our injured workers. Not at all, in fact it's my understanding the University of Maine School of Law is an excellent one. It appears, at least from walking around the halls in Augusta, that it graduates many, many fine lawyers and I have not heard that they are not competent. In fact it's my understanding that we in Maine have a very high per capita incidence of attorneys. If and when that system breaks and if and when there is an absence of competent attorneys willing to serve at a reasonable fee, then perhaps we should be entertaining an amendment like this. But not now. The Bill, once again, does allow this new, fine, improved hopefully, system, the new administrative model as opposed to the judicial model, to allow up to 30% of what an injured worker may receive in benefits, if it decides that's appropriate, after the expenses of the attorney are taken out. I think that's entirely out of question. It's not broken, of all things maybe that's the only thing that's not broken, there seems to be plenty of attorneys there wanting to serve injured workers. So I urge you to vote against adoption of this amendment. Thank you.

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

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I think it's tragic that we even have to have this discussion. It is truly tragic because what we're really talking about is taking a benefit away from a worker through the Blue Ribbon Commission Report and we did that with a very high priced lawyer. So we use a very high priced lawyer to craft language that takes a benefit away from an employee and refuses to give an even playing field to them. It's incredible.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President, Ladies and Gentlemen of the Senate. It is with some trepidation that I rise today. As you know I have for the last 17 years engaged in the general practice of law and as such am inherently suspect as representing perhaps the more voracious aspects of human kind amongst those who have chosen to engage in the legal profession. If I might be allowed to destroy the personal note, I have much more faith in my fellow human beings than perhaps others do who have raised concerns regarding this issue on attorney's fees. For example, I find that there are very few instances when insurance companies in bad faith controvert claims but insurance companies have an obligation to represent their insureds and to

controvert claims when there is legitimate doubt. Attorneys, with whom I have worked on worker's compensation matters for employers have acquitted themselves with great professionalism and I think you would be proud to know them if you had an opportunity to observe their work product. Similarly, the attorneys who have represented injured workers I think have done so in the finest tradition of the law. There may be, in fact we understand that there are, concerns about some attorneys who have specialized in practices in worker's compensation. It should be pointed out, perhaps we can recall our debate of some five years ago in 1987, this was when the prevail standard was put into our Worker's Compensation Statute. As you recall until 1987, or excuse me, until June of 1985, attorney's routinely were paid for reasonable service in representing injured workers whether or not the employee prevailed or not. In that year the law changed so that only attorneys fees would only be paid if in fact an injured worker prevailed in his or her claim before the Commission. That had the effect of actually enhancing and encouraging specialization amongst attorneys in worker's compensation. The market really determined that unless a lawyer did a significant volume of worker's compensation cases it was simply not feasible or economically viable to maintain a practice in worker's compensation. As a result we have seen in the last five years an increasing concentration by some attorneys in the area of worker's compensation for injured workers. We are seeing a concomitant decline amongst general practitioners of which I am one, a vanishing breed I will note, in this particular area, because it is very difficult economically to maintain a practice in the costs that are incurred in worker's compensation cases unless one has a significant volume.

A question was raised by the Senator from York, Senator Dutremble whether a statutory restriction on fees charged by an attorney representing injured workers would in fact be violative of the due process clause of our constitution. I can not give you a categorically yes or no answer. Clearly I think the courts would view the issue as follows: they would determine whether or not there was a rational relationship between the legislative endeavor to restrict attorney's fees and the permissible legislative goal. They would also determine or look to see whether or not the legislative threshold, in this case 30%, had the actual effect of denying attorney representation. I think it would have to be based upon the actual experience which might flow in the market in the event we were to adopt this threshold, or restriction I should say, on attorney's fees. In my judgement there will be a great variance depending upon particular labor markets. If an attorney is practicing in an area populated primarily by paperworkers or those with high average wages, it seems to me that 30% of the wages in dispute would most likely be a reasonable fee and would certainly well compensate an attorney for representing those particular individuals. However, in areas where there is a lower wage, near the minimum wage or lower wages, it seems to me then 25% or 30% of the wages in dispute might not adequately compensate some particular attorneys in some particular cases, depending on the complexity of the case, the length of the case and so on. It would have to be assessed on a case by case basis.

I share the concerns voiced by other members of

this body that injured workers bear an undue portion of their charge for pursuing legitimate claims. There are mechanisms which are ensconced in the State, there is in fact a fee grievance dispute mechanism administered by the Maine Bar Association. I understand the amendment being offered would also allow the Labor Management Board to establish a rule and so on governing attorney's fees. I suspect that the emotion attended to the issue probably exceeds, does not merit much more time in this body tonight. I have some reservation, I'm going to be supporting the amendment offered by the good Senator from Washington, Senator Vose. I believe that the market will behave properly, certainly if there are cases where attorney's are abusing their professional trust and charging excessive fees to injured workers, there should be appropriate and immediate action taken. I don't believe there's any evidence that we have heard that that is going to happen and I for one tend to look at the good in my colleagues and look at the good in individuals. I think we in Maine should actually take some pride in the quality of people who have served us and the legal profession and I think we should view this matter in that light. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator VOSE of Washington, to **ADOPT** Senate Amendment "D" (S-797) to House Amendment "C" (H-1340).

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BERUBE, BUSTIN, CLEVELAND, CONLEY, DUTREMBLE, ESTES, GAUVREAU, MATTHEWS, MCCORMICK, MILLS, PEARSON, VOSE, **THE PRESIDENT - CHARLES P. PRAY**

NAYS: Senators BALDACCI, BRANNIGAN, CAHILL, CARPENTER, CLARK, COLLINS, EMERSON, ESTY, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, RICH, SUMMERS, THERIAULT, TITCOMB, TWITCHELL, WEBSTER

ABSENT: Senator BOST

RESIGNED: Senator BRAUN

13 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion of Senator VOSE of Washington, to **ADOPT** Senate Amendment "D" (S-797) to House Amendment "C" (H-1340), **FAILED**.

On motion by Senator GAUVREAU of Androscoggin, Senate Amendment "A" (S-794) to House Amendment "C" (H-1340) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President, Ladies and Gentlemen of the Senate. The amendment I'm offering to you for consideration this evening would do one simple thing. It would affect the Legislative Committee of Jurisdiction having responsibility to review confirmations to the new Labor Management Board envisaged by L.D. 2464. In fact, in this instance, the amendment I'm offering reflects the original recommendations of the Blue Ribbon Commission. As you may recall when the Blue Ribbon Commission, sort of the document of original intent if you will, as you may recall after the Bill was introduced by the Blue Ribbon Commission various committees of this legislature had an opportunity to

meet with the Commissioners and review discreet elements of the package they were recommending for our consideration. In that regard, the Committee on Judiciary met, I believe it was on September 15 of this year, and we had a session with all four Commissioners and I certainly am not this evening speaking on behalf of the Committee, we took no formal votes or recommendations, and I'm only giving you my reflections on the discussion was. The members of the Committee did have many questions in terms of the proposal to shift what has been traditionally a judicial model to more of an administrative or bureaucratic type mechanism for solving worker's compensation disputes. There were concerns voiced that in the new hearing officer system being proposed, the hearing officers would have sufficient familiarity with worker's compensation law, that they could fairly and properly administer the law throughout the entire state. The members of the Committee did not at that time deliberate the question of whether or not the Judiciary Committee should review confirmations, it really wasn't an issue. In fact, I wasn't aware that this had been an issue until earlier this week when I had an opportunity to review the proposed amendments being posited by the Blue Ribbon Commission. Now I am not rising tonight in an exercise of jurisdictional vanity, as sometimes does afflict this institution, I'm rising because I in fact believe that, as I will develop later in remarks on other amendments I'll offer for your consideration, I believe that the state has a distinct responsibility to offer to its citizens a fair, professional method of dispute resolution and I believe that there should be properly trained judicial officers to resolve disputes in the more serious matters of life, and I would suggest to you that for an injured worker who is facing a significant perhaps chronic and long term disability which would impair his or her earning capacity for life or for a significant time, that in fact is just such a grave and serious matter that in fact any dispute regarding a person's compensation claim should be heard by a fair, impartial, judicially trained officer. It is my opinion that the Committee on Judiciary has traditionally reviewed appointments to the Worker's Compensation Commission and questioned nominees in that light with respect to the qualifications which those individuals should have. Now I understand that the recommendation is that the Committee on State and Local Government in fact should have jurisdiction over the nominations for this Labor Management Board and I believe that the rational underlying that is in fact shifting now to an administrative mode. I respect the dissent, I think that there is a responsibility, as I mentioned earlier, to make sure that whoever the hearing officers are who are appointed by the Joint Labor Management Board, they demonstrate the proper qualifications, they demonstrate the proper concern to the rights and interests of working men and women and Maine businesses. They also present themselves with an appropriate judicial mean and temperament. It is in that respect that I offer the amendment for your consideration. Thank you.

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

Senator BUSTIN: Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise in great trepidation because the one person I never want to oppose is the good Senator from Androscoggin, Senator

Gauvreau. He's a very dear friend of mine and I'm very unhappy that he's leaving this chamber in the near future but I find that I am duty bound because the assignment has been in fact made to the State and Local Government Committee, they are the committee who has jurisdiction over how State Government works. The Judiciary Committee has plenty of appointments to make. The other thing that gives me trepidation is I never try to get into these jurisdictional fights, don't like it, don't feel comfortable with it, but do feel that this is truly a State Government function and it is only a Board, they are not going to be making, to my knowledge, judicial decisions. So in that instance they should be looked at by the State and Local Government Committee so I will be opposing the amendment and ask for a Division.

Senator **BUSTIN** of Kennebec requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **GAUVREAU** of Androscoggin, to **ADOPT** Senate Amendment "A" (S-794) to House Amendment "C" (H-1340).

A Division has been requested.

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

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

5 Senators having voted in the affirmative and 24 Senators having voted in the negative, the motion of Senator **GAUVREAU** of Androscoggin, to **ADOPT** Senate Amendment "A" (S-794) to House Amendment "C" (H-1340), **FAILED**.

On motion by Senator **GAUVREAU** of Androscoggin, Senate Amendment "B" (S-795) to House Amendment "C" (H-1340) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Senate amendment "B" I'm offering for your consideration would address that very narrow period of time in the event this legislation becomes enacted, it would address the narrow period of time with a window, if you will, after the Bill is enacted and before the Labor Management Board is fully constituted and selects an Executive Director of the new system of Worker's Compensation in our state. The amendment would, in fact, allow the current Executive Director, or Chair I should say, of the Worker's Compensation Commission to fulfill on an interim basis the responsibilities of the Executive Director of the new system until such time as the other members of the Board was in fact nominated, confirmed, met and did have an opportunity to select the Director of the new system. All of us, I think, in this room, those who may be supportive or opposing this legislation certainly hope that the proposed Labor Management Board will function with some degree of harmony and will reach prompt agreement in terms of who should direct the new system. There will be some period of time before that will take place. In fact, there could be some delay if agreement is not forthcoming. As I understand it, it's not a simple majority but I believe six of the members have to agree upon the Director of the new Commission. So, because of that, and because it's very important that during this period of transition we take advantage of the skills and the wisdom and the experience and the knowledge of the current Executive Director and allow for a responsible, rational transition that I'm

recommending that this amendment be adopted which will allow, as I say, the Executive Director currently to serve in that capacity until such time as the Labor Management Board should choose his successor. Thank you.

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

Senator **COLLINS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would ask that you oppose the Senate Amendment offered by my good seat mate, Senator Gauvreau from Androscoggin. Essentially what we're trying to do here is to change from the old system to a new system. The new system is the Worker's Compensation Board that would be governed by employers and employees. It will not be a Commission under the present framework which is run by attorneys. Now it seems to me that there is a possibility that there may be a short interim period where it will be necessary to have a temporary CEO. I think that the new board can quickly act upon it and have a new CEO that they may in fact decide to use the present chairman of the Commission. It seems to me that we ought not to put that into the statute, we ought to let this Board do its thing and I hope that you will defeat this amendment. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I appreciate the comments of my seatmate the good Senator from Aroostook, Senator Collins. I appreciate the sage counsel and I'm certain that his presence in the chamber will be missed in future years. As I understand the proposal, the new Labor Management Board, or for that matter the new Worker's Compensation system is going to be asked to be up and running as of January 1 of the new year. It will be responsible for hiring hearing officers, assigning hearing schedules, also for entertaining complaints regarding automatic discontinuances, and dealing with a lot of daily important matters affecting working men and women in our state. I offer the amendment in that light, I believe it is important as we go into this transition, now I make no quarrel about it I don't think we're heading in the right direction, but I think we have a responsibility to provide for a logical, rational period of transition. I think the current Chair of the Worker's Compensation Commission is regarded highly by all individuals, he has the expertise to facilitate what is likely to be a very difficult, very tempestuous transition, and for these reasons I would urge you to take this matter seriously and support Senate Amendment "B". Thank you.

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

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I too rise to support the good Senator from Androscoggin and his presentation of this amendment. What this amendment reminds me of is the fact that we have changed this system probably four times in the last six or seven years and the person who has been charged with carrying out those changes has done so in an admirable way. He's the only person who has a track record to show this body and the people of this state in fact he can adapt to changes. It is important that there be a bridge between what is going to be the ultimate destruction of the present system and the creation of the new system. Someone who actually

understands what is involved with employees who get injured, and companies who want to controvert those injuries. Somebody who knows the players who are involved in the system, this man I believe, makes a very bad situation a palatable one and I'm hopeful the body will adopt it. Thank you.

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

THE PRESIDENT: The pending question before the Senate is the motion of Senator **GAUVREAU** of Androscoggin, to **ADOPT** Senate Amendment "B" (S-795) to House Amendment "C" (H-1340).

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BALDACCI, BERUBE, BUSTIN, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, PEARSON, TITCOMB, VOSE, THE PRESIDENT - CHARLES P. PRAY**

NAYS: Senators **BRANNIGAN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, THERIAULT, TWITCHELL, WEBSTER**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion of Senator **GAUVREAU** of Androscoggin, to **ADOPT** Senate Amendment "B" (S-795) to House Amendment "C" (H-1340), **FAILED**.

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

Senator **PEARSON:** Mr. President, having voted on the prevailing side, I now move that the Senate **RECONSIDER** its action whereby it **INDEFINITELY POSTPONED** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**.

Senator **CAHILL** of Sagadahoc requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **PEARSON** of Penobscot, that the Senate **RECONSIDER** its action whereby it **INDEFINITELY POSTPONED** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**.

A Division has been requested.

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

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

19 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **PEARSON** of Penobscot, that the Senate **RECONSIDER** its action whereby it **INDEFINITELY POSTPONED** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**, **PREVAILED**.

THE PRESIDENT: The pending question before the Senate is the motion by Senator **CAHILL** of Sagadahoc to **INDEFINITELY POSTPONE** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**.

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

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

Senator ESTY: Thank you Mr. President, Ladies and Gentlemen of the Senate. Without getting into the details of this amendment again let me just remind the Senate that this amendment is comprised of a number of recommendations, not from myself, but from the Labor Management Ad Hoc group that had considered this. It also has no costs and I would like to thank the good Senator, Senator Pearson from Penobscot County for reconsidering. Thank you.

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

Senator CARPENTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. I still can't understand how there is no cost to this. If \$441.00 will be constant under this Bill, amendment "C" says that the first year will use the figure of \$441.00 for the maximum wage and every year thereafter you would use 90% of the average wage in the State of Maine. \$441.00 is already much higher than the average wage in the State of Maine, therefore, under this bill there is an increased cost. Thank you.

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

Senator ESTY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would only restate that the Labor Management Ad Hoc Committee, in reviewing this recognized that the actuarial reports indicated that the savings were in place because of this and in fact this keeps those savings in place. Thank you.

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

Senator BALDACCII: Thank you Mr. President, Ladies and Gentlemen of the Senate. I apologize for asking a question but I would like to pose a question. If this was the issue that the Blue Ribbon Commission's Report in its original L.D., that was taken out by an amendment that was offered and now is being put back in, when the actuarial assumptions in savings of this Blue Ribbon Commission report were established I'd like to ask were they established with the original L.D. that I referred to earlier or were they with the amendment that was offered earlier this afternoon? And I'd like to know if we're impairing those savings. Thank you.

THE PRESIDENT: The Senator from Penobscot, Senator Baldacci has posed a question through the Chair to any Senator who may care to respond.

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

Senator MCCORMICK: Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to answer the question from the good Senator from Penobscot. The actuarial savings were established based on the original Bill. This, the original report. So putting the language back to this does not change the savings. Thank you.

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

Senator CARPENTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. That very well might be correct but don't forget under amendment "C" to the original Bill there are many items that are also changing the actuarial report of the original Bill. Some are up, some are down. If you pass this amendment you're still going to cost money and the savings will not be there. Thank you.

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

Senator BALDACCII: Thank you Mr. President, Ladies and Gentlemen of the Senate. I apologize for going through this but I'm going through this process because when I get to the end of this process I'd like to determine in my own mind if I'm decreasing the savings that was estimated in the Blue Ribbon Commission Report. If we're deviating from what has been established. In that amendment the only area of concern in the eight statements of fact was area number five and area number five where it talked about eliminating changes in language concerning maximum benefit levels contained in the amendment was explained that it goes with the original report in the original L.D. and it's not any different than what was in the original L.D. submitted by the Blue Ribbon Commission. If the actuarial analysis that was done for the original Blue Ribbon Commission report, if within my mind, as simple as it is, would remain the same, the other changes had to do with technical things of the Board composition and study and the appointees themselves. If there is something else there that increases the premiums in worker's compensation I would like to know about it. Thank you.

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

Senator CARPENTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. When we're done, or you are done, tacking all these amendments onto Amendment "C" or onto the main Bill it sure will affect the cost savings of the Bill for the State of Maine. Thank you.

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

Senator BALDACCII: Thank you Mr. President, Ladies and Gentlemen of the Senate. My concern with this particular amendment I would appreciate somebody pointing out to me where we're decreasing, in this particular amendment, where we are decreasing the savings from the original Blue Ribbon Commission report and the actuarial analysis that went with that. I would like to know where, in this amendment, are we decreasing the savings. Thank you.

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

Senator COLLINS: Thank you Mr. President, Ladies and Gentlemen of the Senate. At the risk of repeating myself I understand that the escalation was based on \$441.00 and that the actuary used that number in his calculations. Now what we've done is we've changed that so that we permit escalation and in July of 1993 this will make a difference of 112% as opposed to 90%. Mathematically, it figures out to about \$35.00 and on a continuing basis, of course, it has possibilities for further expansion. So it seems to me that is can't help but increase cost. Thank you.

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

Senator DUTREMBLE: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like to pose a question to the good Senator from Aroostook, Senator Collins because I guess I've heard this answered in a number of different ways. Were the actuarial reports done on the original wording of the Blue Ribbon Commission or were they done on this amendment? To pre-answer my question, if they were done on the original report then it doesn't make any difference to the cost savings. It's already been figured in if it's done on the secondary change that was made today.

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

Senator **KANY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I need to inquire to the Senator from Aroostook, Senator Collins, where he sees the date change. I do not see the date change and I've read the original Bill, I've read House "C" and then the amendment which would eliminate House "C" and go back to the original Bill and there is no date change there. Perhaps that's what the Senator's problem is. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **CAHILL** of Sagadahoc to **INDEFINITELY POSTPONE** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **INDEFINITE POSTPONEMENT**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BRANNIGAN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, THERIAULT, WEBSTER**

NAYS: Senators **BALDACCI, BERUBE, BUSTIN, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, PEARSON, TITCOMB, TWITCHELL, VOSE, THE PRESIDENT - CHARLES P. PRAY**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

16 Senators having voted in the affirmative and 17 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion of Senator **CAHILL** of Sagadahoc, to **INDEFINITELY POSTPONE** House Amendment "E" (H-1350) to House Amendment "C" (H-1340) in **NON-CONCURRENCE, FAILED**.

House Amendment "E" (H-1350) to House Amendment "C" (H-1340) **ADOPTED**, in concurrence.

On motion by Senator **CONLEY** of Cumberland, Senate Amendment "E" (S-799) to House Amendment "C" (H-1340) **READ**.

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

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I apologize for the confusion although I know those here will be happy to know that I only have two amendments. This amendment I offer to this body as a matter of conscience. I recognize that many in this body feel that the Blue Ribbon Commission's report as is, should pass. This amendment essentially repeals most of the Bill and leaves in tact two very important provisions. One being the mutual fund worked on very hard by the good Senator from Kennebec, Senator Kany and others, and also the Labor Management Board originally suggested by the Ad Hoc Labor Management Committee who really got the Blue Ribbon Commission going down the track in looking at the Michigan law. I find it unconscionable that at this time we should be asking injured workers in this state to be giving up benefits which, I believe, they are entitled to. Benefits which have been continuously reduced over the years. I feel that we should go along with what the Ad Hoc group gave us in the beginning, which was to create a system run by labor, run by management, run together. Let them decide what benefits should

be reduced, if any, and what course this system should take. Thank you.

Senator **CONLEY** of Cumberland requested a Division. **THE PRESIDENT:** The pending question before the Senate is the motion of Senator **CONLEY** of Cumberland, to **ADOPT** Senate Amendment "E" (S-799) to House Amendment "C" (H-1340).

A Division has been requested.

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

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

8 Senators having voted in the affirmative and 22 Senators having voted in the negative, the motion of Senator **CONLEY** of Cumberland to **ADOPT** Senate Amendment "E" (S-799) to House Amendment "C" (H-1340), **FAILED**.

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

Senator **CLARK:** Mr. President, having voted on the prevailing side, I now move that the Senate **RECONSIDER** its action whereby it **FAILED** to **ADOPT** Senate Amendment "B" (S-795) to House Amendment "C" (H-1340).

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

THE PRESIDENT: The pending question before the Senate is the motion of Senator **CLARK** of Cumberland that the Senate **RECONSIDER** its action whereby it **FAILED** to **ADOPT** Senate Amendment "B" (S-795) to House Amendment "C" (H-1340).

A vote of Yes will be in favor of **RECONSIDERATION**. A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BRANNIGAN, BUSTIN, CLARK, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, MATTHEWS, MCCORMICK, MILLS, PEARSON, TITCOMB, VOSE, THE PRESIDENT - CHARLES P. PRAY**

NAYS: Senators **BALDACCI, BERUBE, CAHILL, CARPENTER, CLEVELAND, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, RICH, SUMMERS, THERIAULT, TWITCHELL, WEBSTER**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

15 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion of Senator **CLARK** of Cumberland that the Senate **RECONSIDER** its action whereby it **FAILED** to **ADOPT** Senate Amendment "B" (S-795) to House Amendment "C" (H-1340), **FAILED**.

THE PRESIDENT: The pending question before the Senate is **ADOPTION** of House Amendment "C" (H-1340) as Amended by House Amendments "E" (H-1350); "H" (H-1356) and Senate Amendment "C" (S-796) thereto, in **NON-CONCURRENCE**.

Senator **CAHILL** of Sagadahoc requested a Division. On motion by Senator **WEBSTER** of Franklin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The pending question before the Senate is **ADOPTION** of House Amendment "C" (H-1340) as Amended by House Amendments "E" (H-1350); "H" (H-1356) and Senate Amendment "C" (S-796) thereto, in

NON-CONCURRENCE.

A vote of Yes will be in favor of **ADOPTION**.
 A vote of No will be opposed.
 Is the Senate ready for the question?
 The Doorkeepers will secure the Chamber.
 The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BALDACCI, BERUBE, BRANNIGAN, BUSTIN, CLARK, CLEVELAND, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, PEARSON, TITCOMB, TWITCHELL, VOSE, THE PRESIDENT - CHARLES P. PRAY**

NAYS: Senators **CAHILL, CARPENTER, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, THERIAULT, WEBSTER**
 Senator **BOST**

ABSENT:

RESIGNED: Senator **BRAWN**

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, **ADOPTION** of House Amendment "C" (H-1340) as Amended by House Amendments "E" (H-1350); "H" (H-1356) and Senate Amendment "C" (S-796) thereto, in **NON-CONCURRENCE, PREVAILED.**

Which was under suspension of the Rules, **READ A SECOND TIME**, without reference to a Committee in **NON-CONCURRENCE.**

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "B" (S-798) **READ.**

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

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I wanted to tell you what this amendment is in fact about. I'll read you the Statement of Fact, I don't have it in my book so I'll have to read it from my seat mate. This amendment allows a dependent child of an employee killed by a work injury to complete a post secondary degree program before death benefits to that child are stopped. The amendment also provides that compensation for a physically or mentally handicapped child continue after that child has reached the age of 18 for as long as that child is incapacitated. What we've done in the Blue Ribbon Commission Bill, the Bill that is before you, is that we have taken the death benefits that were a lifetime benefit to the family of the injured worker and we have reduced them to ten years and in some instances, depending on when the death occurred, five years. My problem with this is that if the child, if that child in the family is like 3 years old, I use that because it works mathematically, and you have one parent left, that means that you have that one income to raise that three year old child with except that you get the death benefits. So until that child is 13 years old, if you come under the ten year rule, or the five hundred weeks, it doesn't really reach a complete ten years, then you're okay. You have the two income family that you thought you were going to have when you first had that child. At age thirteen, all of a sudden that second paycheck is taken away from you. For no other reason than that this bill limits those death benefits. What my amendment aims to do is at least follow that youngster through to the higher education years. Through to age twenty three if they

seek higher education. That's what this Bill is about.

The other part of the Bill if for those children who are mentally or physically incapacitated and can not earn a living. So that if you have a child in your family who has mental retardation and one of the parents die, for ten years you are able to have that second income and then if you don't remarry you are left with only one income for the rest of that child's life. I state that that is not fair to that person, that child who is never going to be able to earn their own living and whose other parent, other support, is not there. That's what this amendment does and that's what it's about and I urge your support. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator **Webster**.

Senator **WEBSTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'm sure the good Senator from Kennebec has offered this amendment with good intentions and I commend her for that. I think the problem I would have with this amendment is that this is not the place to be establishing a social welfare program. It would seem to me that it may be a good idea but perhaps there ought to be other ways to pay for this. Through the general fund or some other way. It's not responsible or reasonable to ask the employers of this state or, more important, the workers of this state through lower wages to pay for every conceivable problem that might arise through the worker's compensation system. It seems to be that even though this is a well intended amendment, the good Senator ought to be here for this legislature if she is elected in November offering to deal with this matter and paid for by the general fund. Rather than asking the workers of this state to pay through diminished job opportunities, diminished wages and benefits, to pay for this program when there are other ways to do it. Thank you.

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

Senator **MCCORMICK:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to pose a question through the Chair to the good Senator from Franklin, Senator **Webster**. If I heard you right, you're advocating that we shift the cost from the business whose responsibility it is to create a safe workplace, the cost for that injury, to the taxpayers of the State of Maine. Is that true? Are you advocating that the general fund pay the cost, i.e. the taxpayers of Maine, for injuries caused on the job while workers are working for an employer who has a legal responsibility to maintain a safe workplace.

THE PRESIDENT: The Senator from Kennebec, Senator **McCormick** has posed a question through the Chair. The Chair recognizes the Senator from Franklin, Senator **Webster**.

Senator **WEBSTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. In response to the question, what I'm suggesting is ten years is probably long enough on the system to require a business person, an employer and the workers of this state to pay for a potential or possible injury. When I'm talking to people in my district every day, particularly older people, one of the biggest complaints I hear from the people who are on Social Security is the fact that many of them feel that Social Security is no longer just a retirement fund as intended. It's now become a number of other

things including Social Security, disability and all those kinds of things that are paid for under Social Security. A lot of people feel, and I think rightfully so, that Social Security was established for a retirement for those who worked all their lives to have a guaranteed income. There are some people who would argue, and I would have to agree with them, that it's come to the point now that one of the reasons that our Social Security system is in trouble is because it has become much more than it was intended. My argument with you here tonight is that we can not expect the employers and, more importantly to me, the workers of this state to continue to get less wages, less benefits and less job opportunities because they are not getting the kind of wages, job opportunities they should be getting because the cost of worker's compensation is so high. Government can not do everything for everybody. The employers and employees of this state should not be expected to do everything for everyone. If there is a desire by the Senator from Kennebec, either Senator from Kennebec, to have a never ending program to solve all of societies problems then I suggest they introduce legislation next year. Thank you.

THE PRESIDENT: The Chair would advise members the pending question is the adoption of Senate Amendment "B".

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

Senator MCCORMICK: Thank you Mr. President, Ladies and Gentlemen of the Senate. It is not I in this case who is advocating an unending welfare program funded by the general fund and the taxpayers of this state. It is instead, the good Senator from Franklin, Senator Webster who has just advocated that. So I ask you again, are you saying that you are advocating that it is the responsibility of the taxpayers of the State of Maine to pay the costs that should be the responsibility of the employers of the State of Maine, whose legal responsibility it is to maintain a safe workplace. I ask you that question again and I would really like it if you would answer that question. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would suggest the current law is sufficient. I would argue that ten years is a sufficient amount of time for the worker's compensation program to pay as is currently allowed in the law. Those who feel that government should do more ought to introduce legislation which would require that.

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

Senator BUSTIN: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would remind you that worker's compensation insurance is not the government. It is insurance. Insurance means that you take a risk and when you as an insuring company want to take that risk, you run the actuarial tables to do that. What this amendment does is ask them to consider two classes of children who have lost a parent. Those who are physically and mentally handicapped, incapacitated, can not earn a living for themselves, and the children of that dead parent to get their higher education. That's what this bill is about and what the good Senator from Franklin, Senator Webster is proposing is the welfare system should do that? Why on earth would you want the

welfare system to pick that up? Why on earth wouldn't you want an insurance company to put that in their actuarial table and pay for it, pay for that risk. If we do what we're supposed to do as employers, if we provide the safe work places, if we do what we're supposed to do for workers and provide them with a safe work place we will not even have to have the actuarial studies to show how much that would cost because we won't have dead workers. We won't have dead parents and we won't have to worry about paying under worker's compensation insurance the ability to have those children go on to school or to be taken care of if they are incapable of taking care of themselves. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator BERUBE: Thank you Mr. President, Ladies and Gentlemen of the Senate. I wonder if someone could explain something to me. We hear that this would allow the physically and mentally handicapped to be reinstated, but in L.D. 2464, page 42, lines 22 through 24, it explicitly says that it stops at age 18 if they are neither physically or mentally incapacitated. So does this mean that that portion of the Senator's amendment is already in the law as presented by the Blue Ribbon Commission? And then I have another concern. If someone, and please answer me if someone could, if a worker is killed on the way to and from work would that also come under worker's comp as a disability, as a benefit, as well as with Social Security benefits which, I suspect, would begin. But would that include that as well?

THE PRESIDENT: The Senator from Androscoggin, Senator Berube has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: Thank you Mr. President, Ladies and Gentlemen of the Senate. I am satisfied from having a discussion with a member of the Revisor's Office, it's my understanding that the language in my amendment clarifies in the Bill that it is intended that those two categories get covered. Secondly, if you are injured or if it is a fatality on the way to or from work, it depends on whether or not it is a work related injury as to whether you get paid or not under the worker's comp insurance laws. So that if you were, for instance, a salesman and you were travelling from Portland to Bangor in the line of your business, you might indeed be covered under the worker's compensation insurance although you'd have to ask the good attorneys in our audience to clarify that. But if you are going to and from work and you are not within your work site it might not be covered. I suspect though that you would be able to get enough settlement to be able to cover any future expenses for the children if you had the automobile insurance under the automobile insurance laws. As to Social Security, that's a big question that's always brought up when you talk about this because you say, "well aren't the children covered under Social Security?". Let me just relate to you a story of a constituent of mine, who I do not believe the other spouse was a work related injury however, it's instructive for us and that is she was being evicted from her home. She has a retarded youngster. I got to know them really through my business. She could not get welfare because she had been in the hospital, she couldn't work and they had said to her she had to work through work fare in order to get the welfare. So she went home and her person with mental

retardation said "why don't you call Beverly". So she called Beverly and Beverly said I think you better go and get a doctor's certificate and you better go back down to the welfare office and get your rent paid. The reason that I relay that story is because what Robert got under Social Security was \$235.00 a month. Is that what you're asking for these children to do is to have \$235.00 a month come to them because they have lost a parent? And over and above that I believe there is what is called an offset, and I'm not sure in this program whether Social Security and worker's comp are offset but if it were an offset than if the worker's comp insurance monthly payment was \$400.00 and the Social Security was \$200.00 the worker's comp payment would only be \$200.00 for the total of \$400.00. That's the way the system works. Thank you. On motion by Senator **BUSTIN** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to pose a question through the Chair if I may to anyone to would answer. My question is how much additionally will this amendment cost an already unaffordable worker's comp system?

THE PRESIDENT: The Senator from Sagadahoc, Senator Cahill has posed a question through the Chair to any Senator who may care to respond. The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I do not know the cost of it but I can measure it by what kind of credit the Blue Ribbon Commission gave. They only gave 1% for the reduction of the death benefit. So I would suspect it would be a miniscule amount that it would affect. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator **BUSTIN** of Kennebec to **ADOPT** Senate Amendment "B" (S-798).

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

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BUSTIN, CONLEY, ESTES, GAUVREAU, MCCORMICK, VOSE**

NAYS: Senators **BALDACCI, BERUBE, BRANNIGAN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, DUTREMBLE, EMERSON, ESTY, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, MILLS, PEARSON, RICH, SUMMERS, THERIAULT, TITCOMB, TWITCHELL, WEBSTER, THE PRESIDENT - CHARLES P. PRAY**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

6 Senators having voted in the affirmative and 27 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion of Senator **BUSTIN** of Kennebec, to **ADOPT** Senate Amendment "B" (S-798), **FAILED**.

On motion by Senator **GAUVREAU** of Androscoggin, Senate Amendment "A" (S-793) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Like my colleague

about an hour ago, the good Senator from Cumberland Senator Conley, who rose before you to express his conscientious objections to a certain portion of the Bill we are considering tonight, I also rise and offer for your consideration Senate Amendment "A". Now as you know, the Blue Ribbon Commission has called for an ablation of the current worker's compensation commission. It has called for that body to be replaced by a Joint Labor Management Board, consisting of four representatives from labor, four representatives of business. Now as I reviewed the deliberations of the Blue Ribbon Commission I was certainly aware of the high cost of worker's compensation in our state and the need for this legislature and Governor to work together to attempt to craft a responsible legislative package which would address the escalating cost of worker's compensation. I fully expected that the discussion would focus upon benefit levels, would focus on eligibility for compensation, the breadth of compensability and perhaps the duration of benefits and the extent of coverage. I was quite surprised when I learned that the Commission was recommending the complete ablation of the worker's compensation commission. It had always been my perception and remains my perception that the Commission has functioned very well in very turbulent and difficult waters. The Worker's Compensation Commission did not create the high cost of worker's compensation, there are in fact a multiplicity of factors that give rise to the high cost. Not the least of which are the fact that we are a rural state, we have a relatively lower educated work force, people do not have significant transferrable skills and in many parts of our state there are not the incidence of jobs available for people with significant work injuries to readily transfer to lighter work. On top of that we have rapidly escalating health care cost system, which constitutes about 40% of the cost of your worker's compensation premium dollar. But it seems to me that in this discussion on the current crisis, we hear people decrying the culture of compensation. One must apply from that that is an overly prestigious system which must be replaced.

I have high regard for all the members who served on the Blue Ribbon Commission, we all owe them a debt of gratitude for taking the time and investing the energy they did as Maine citizens to attempt to create a new system of compensation laws for us. But I must respectfully and strongly dissent with that portion of the Blue Ribbon Commission report which calls for the elimination of the Worker's Compensation Commission. In raising this objection, I take this very seriously. It is my strong belief that amongst the most important functions of any government is to drive a neutral, professional, process for litigants, or partys, to have significant claims resolved. As you know, in worker's compensation, employees are barred from bringing private civil actions in almost all cases when they are injured at work. So the soul remedy is to pursue claims under our worker's compensation system. We have over the past two decades developed a system where we now have competent, professional, trained Commissioners uniformly applying the law throughout the entire state. Those Commissioners are not involved to a significant extent in the development of the law. Their laws are bound by what this legislature establishes as a substantive law for worker's compensation. Because as you know worker's

compensation is a substantive law, it is not common law. It is not made by judges, it is made by the statutory creation of this legislature.

When the members of the Blue Ribbon Commission came before the Committee on Judiciary we asked the consultant what were the discernable savings inherent in eliminating the Worker's Compensation Commission. The response was there were none. There were no discernable savings. So we asked then why would we in fact jettison the Commission which has served businesses and working men and women of this state well over the past two decades. The response was, in fact, that we want to reduce litigation. We want to curb this prestigious culture which has developed the American society. And yet there was no persuasive, cogent argument advanced as to why we should eliminate the Commission. I understand the rationale the founders or the drafters of the Blue Ribbon Commission report and their supporters in this legislature. They want to completely eliminate the current body of worker's compensation law and start a new. We can make an analogy if you will to a person who has an old out dated motor vehicle, not working well, it's inefficient, it costs too much to run. They want to have a new model. Or a company which has had an old automobile now wants to develop a new shiny automobile to sell in the market. They want to make a leaner, more efficient machine. But, this old automobile has always had a very effective safety harness for its occupants. No matter what accidents people in the car came upon they always had protection because the safety harness protected them from serious bodily injury. There was never any complaint as far as the safety harness, it was always highly regarded. And yet, when the new vehicle was drafted, it was decided that we would just toss out this old safety harness and replace it with a rubber band. And the manufacturers of the rubber band says it's fine. Just trust us. This is going to work perfectly well. It seems to be the same thing which is going on in worker's compensation. The Worker's Compensation Commissioners in fact have done an outstanding job trying to apply the law fairly and uniformly throughout our state. The legislature could not resist the political urge and demand to constantly amend and reformulate the law of worker's compensation. So that in many cases we have claims before the Commission where there are four or five different laws applying to the same individual. And yet we're told we should just eliminate the trained Commissioners and replace them with hearing officers. Now I point out to your attention there is nothing in the statute, nothing in the Bill at all that addresses the qualifications of hearing officers. They need not be grounded in the law, they need not be attorneys, they need not need have any special or specific expertise in the worker's compensation law. There is nothing more central to the dispensation of justice in any society than having a professional, neutral, disinterested system of law and a court system. In our system, the Worker's Compensation Commissioner's have discharged that function.

I have major reservations as to qualifications of hearing officers who will supplant the Worker's Compensation Commission. It seems to be that this is not a function we ought to privatize. I don't understand why we should assign to any labor organization or any business organization the responsibility for appointing, appointing,

regulating, people who are going to be in fact discharging clearly judicial functions. Now I understand that concern is a bit abstract. It doesn't resonate with many members of the Legislature. But you know sometimes the wounds that hurt the most are the easiest to hide. And it strikes me that with all the discussion and all the contretemps about the benefits cuts or about automatic discontinuances or about the injured workers not having ready access to attorneys all those concerns pale in comparison to the recommendation we have now to eliminate the Worker's Compensation Commission. That this is not a burning issue of controversy is evidenced by the fact we have about a dozen Senators now listening to the debate. And yet I find nothing more troubling in this Bill than the recommendation to eliminate the Commission and replace it with hearing officers.

It is a central tenet of due process that judicial officers, hearing officers, be independent. Now currently Commissioners serve six year terms. They can not be removed unless because the Governor would remove them and the Legislature and the Committee on Judiciary Review give the recommendation to remove Commissioners. There are no such guarantees or assurances of independence in the draft before us. To the contrary, hearing officers can serve at the pleasure of the Labor Management Board. There's no particular term of office. I have spent a good deal of time considering the qualifications, considering the ability of those who will serve in the hearing officer capacity. Now grant you that this may not be the most important issue regarding this Bill, but to injured men and women and to businesses who come before the hearing officers, they will find a palpable diminution of the quality of justice. And we haven't heard about it much tonight but I suggest to those of you who will be returning to this legislature next year or the year after that or the year after that, there will be an ever increasing crescendo of dissents, of concerns, of Maine citizens who felt that their claims were not judiciously, fairly processed. At first you may just cast them aside as disgruntled litigants, but after the first dozen or so come in you'll understand the actual implications of what we're doing tonight. This is a profound tragedy. This consigns Maine's working people to a clearly inferior system of justice separate but equal. We're told the system will work fine. The hearing officers will be schooled in the law they will apply the law fairly and impartially, uniformly, just as the current system does. Most likely what will happen if, as the proponents of the new system urge, if mediation is successful, if mediation does resolve some of the less complicated cases, we'll still have as we've always had the significant cases, the complicated cases that have to go before the hearing officer for a resolution. These are not easy cases. You can't hide the matter under the rug by assigning tremendous authority to the I.N.E. and assuming that the case will be resolved in a simple fashion. In regard to an injured worker who has three or four injuries in his or her vocational history, injuries in 1984, 1987, 1989, 1991, you've got four different areas of the law to apply. You've got the comparative medical evidence to apply to the cases arriving after 1987. You have to instill all this and apply this. There is no way we can avoid this because the substance of law of worker's compensation can not be repealed

retroactively. The reality is that judicial officers, commissioners, judges, hearing officers, call them what you will, will have to assimilate the law and apply the law fairly. One of the major weaknesses, one of the major flaws in this Bill is that it does not provide any meaningful opportunity for appellate review. Oh sure, there's language in there that people can appeal to the Maine Supreme Judicial Court or there's the matter of such gravity that the whole Board can convene on the issue. As a practical matter there won't be more than five or six cases that will not be taken care of within a year. As you know, or as you should know, there's a discretionary appeal. There's tremendous discretion given to the findings of the hearing officer. Findings which in fact are not subject to change. And I for one must honestly challenge the qualifications of these individuals to know and apply the law at a level that the current commissioners do. Now it's all full and well to assail the system as a product of attorneys in that with attorneys somehow all our problems will go away. Life isn't that simple. The profound tragedy is that folks will be hurt, they will in fact be Maine citizens but also employers who will come to understand all too late how essential a system of justice is in impartial fashion. Because this is an abstraction, we can't reach out and put a hand on the system of justice, we sometimes think it's a waste. Certainly in times like now, when there are tremendous pressures upon us to reduce, to limit, to restrict the rights of our citizens, the need for an informed, professional, qualified judiciary is more important than ever. There are very few bills which have come before the legislature during my legislative service which have aroused such profound misgivings. It appears to be almost certain that there will be substantial disparities of justice. We will have succumbed to the transitory demands of the moment, we will have opted for the grander vision. We will have thrown out and discarded an element of our worker's compensation system, the Commission itself, which has functioned admirably under tremendous pressures. To me it is a disappointment of the highest order that I end my service in this legislature opposing this Bill and having to make this choice. But this portion of this Bill contravenes everything I have come to admire and revere about the law and its application and benefit to our citizens. And it is in that spirit that I offer this amendment, it is in that spirit that I urge you to accept the amendment and retain the Worker's Comp Commission which has served us so well. Thank you.

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

Senator COLLINS: Thank you Mr. President, Ladies and Gentlemen of the Senate. I would urge you not to support this amendment. And while my good friend the Senator from Androscoggin, Senator Gauvreau makes a very impassioned case, I listened intently and I understand his deep feelings about the dramatic changes that are being proposed. Unlike my good friend, I am a bit more optimistic about the eventual outcome of this type of change. It seems to me that the idea is in fact to change this from an adversarial type of neverending conflict between management and labor to one where they may work together. And I am optimistic about the formation of a board that is governed by the players, by those who pay the bills, by those who receive the benefits. It seems to me

that it's worth trying. Lord knows we've failed in the present system. As my good friend Senator Kany, of Kennebec has said many times today, the old system is broken, it isn't working real well, neither side is very happy. Small employers can't pay what they have to pay for coverage. Workers are disgruntled and unhappy with their benefits. Businesses are reluctant to expand or to come to Maine because of the system that we have which doesn't work very well. Now I'm sure that one of the most important things that we ought to do is, if we're going to give this a chance at all at success, is to let the new players begin to see what they can do. With the legislation they have the power to appoint hearing officers, to hire them. No, it doesn't suggest that the hearing officers have to be attorneys, but that's not entirely unusual even in the State of Maine. As I recall we have hearing officers in the Department of Labor, we have unemployment compensation hearing officers. Some of those are attorneys and some are not, but they seem to function adequately. It seems to me that we may end up with attorneys as hearing officers but not necessarily. But we aren't giving much credit to those people who will become a part of running the new system. I hope tonight you give them that opportunity. I would hope that you would oppose the pending amendment. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator GAUVREAU of Androscoggin, to ADOPT Senate Amendment "A" (S-793).

The Chair ordered a Division.

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

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

6 Senators having voted in the affirmative and 26 Senators having voted in the negative, the motion of Senator GAUVREAU of Androscoggin to ADOPT Senate Amendment "A" (S-793), FAILED.

On motion by Senator CONLEY of Cumberland, Senate Amendment "C" (S-800) READ.

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

Senator CONLEY: Thank you Mr. President, Ladies and Gentlemen of the Senate. And more specifically members of my own caucus since we discussed this in our caucus and since members of the minority have made it fairly clear that they are not going to consider any amendments here tonight. This being the last amendment I would like to direct your attention to the discussion we've had about this issue. This is specifically relating to Section 223 of the Bill and what this amendment would do is repeal that section. Now as you recall when we broke after discussing this I had indicated to you my strong reservations about the language because it seems to discriminate against senior citizens who work in places, retired like the good Senator from Norway, Senator Twitchell, retired and then went back to work at the same place where they had been working before, and the language seemed to say that these individuals would have a presumption against them if they are out of the work force if they got hurt on the job. They would have to overcome that presumption in order to get benefits for a work related injury. After we broke, Senator Esty of Cumberland sent off the Legislative Assistant to go to the Library and see if there were any cases in Michigan, from where this language was taken, to see if this dealt with what she had described as just people who had retired and

were collecting worker's compensation benefits simultaneously. Not dealing with someone who came back on to that payroll and then was hurt. I would just like to read into the record that she has reviewed the Michigan court cases and can not find any cases which deal with this issue. Because of that, I want to ask you, those of you particularly who read this language and I think can see that it's plain meaning is exactly what it says. That Senior citizens who retire from a job and then go back to work for that same employer, if they are then hurt on that job they, unlike you or I if we're working for that employer, have to overcome a presumption that they're out of the workplace, that they're no longer interested in work. This is a very small piece in this Bill. It is the most outrageous piece of the Bill that I have seen because it treats senior citizens like second class citizens. It's unfair, it is against everything that I have ever believed and I would request a Roll Call on this amendment.

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

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

Senator KANY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I rise to oppose the amendment and I refer you all to page 52 of the original Blue Ribbon Commission Bill. Page 52, Section 223, Presumption of Earnings Loss for Retirees. The presumption, "an employee who terminates active employment and is receiving non-disability pension or retirement benefits under either private or governmental pension or retirement programs, including old age benefits under the United States Social Security Act, 42 United States Code, Section 301 to 1390, that was paid by or on behalf of an employer from who weekly benefits under this Act are sought is presumed not to have a loss of earnings or earning capacity as a result of compensable injury or disease under this Act. This presumption may be rebutted only by a preponderance of evidence that the employee is unable, because of a work related disability to perform work suitable to the employees qualifications, including training or experience. This standard of disability supercedes other applicable standards used to determine disability under this Act." I believe that is a very reasonable law and the discussion about this section and proposal came about because of those who had retired, who avowing retirement, may seek benefits under the worker compensation law for a claim arising out of the period of the work period. So the person is retired, receiving a pension, receiving retirement benefits and is claiming, prior to retirement, that the illness or injury arose from that work place. Now it seems very reasonable that that person should perhaps, indeed it was a workplace injury or whatever, receive the medical benefits but clearly can not expect to be receiving wages after choosing and seeking retirement and retirement benefits. The wage loss based upon an expectation of continued earnings, So I oppose the amendment and I hope you will also. Thank you.

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

Senator CONLEY: Thank you Mr. President, Ladies and Gentlemen of the Senate. I appreciate the good Senator from Kennebec reading into the record the exact language we are discussing here. There is

nothing in that language which says that you are talking about a period of time before the employee retired as being that period of time when the person was injured. What I'm concerned about and what I see this language doing is dealing with a person who does retire, then goes back to work for that employer, and then gets injured. There is nothing in this language which prevents that senior citizen, that person who has retired, from having to get over the presumption which this creates. It's very unfair, it's the most unfair provision in here. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator CONLEY of Cumberland to ADOPT Senate Amendment "C" (S-800).

A vote of Yes will be in favor of ADOPTION.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BUSTIN, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, MCCORMICK, TITCOMB, TWITCHELL, VOSE

NAYS: Senators BALDACCII, BERUBE, BRANNIGAN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, MILLS, PEARSON, RICH, SUMMERS, THERIAULT, WEBSTER, THE PRESIDENT - CHARLES P. PRAY

ABSENT: Senator BOST

RESIGNED: Senator BRAUN

10 Senators having voted in the affirmative and 23 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, the motion of Senator CONLEY of Cumberland, to ADOPT Senate Amendment "C" (S-800), FAILED.

THE PRESIDENT: The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED** in **NON-CONCURRENCE**.

Senator CAHILL of Sagadahoc requested a Division.

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

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator CAHILL: Thank you Mr. President, Ladies and Gentlemen of the Senate. I'll be voting no this evening and I'd like to take a couple of minutes to explain why. I was going door to door in my district campaigning the other day and someone who I happened to find home, a gentleman, said to me "What are you going to do on Worker's Comp when you go into Special Session next week?". And I said, I'm optimistic that we will have a package before we adjourn the legislature. And he said "Oh come on, how many times have I heard you say that?". And I said, "no this time is really different. We're going to have a Worker's comp package because I think everyone finally realizes that the cost of worker's comp is prohibitive in this state. It's driving not only employers but jobs out of the State of Maine". He said "what's so different?" And I said, "Well, finally the Legislature realized that in a Legislative environment we really can't agree, it's a difficult process. It's a difficult situation. And it involves some very difficult choices. And we've decided that we can not make those choices in the Legislative environment. We've proven it time and time again that we can't do it. But what's different

this time is that at least we got together and agreed to appoint a Commission, a bipartisan commission, a commission outside the legislative process to look at this problem and then we agreed that we would adopt the recommendations of this commission." Knowing full well that not everyone would be happy. No one would be happy with this Commission because it was going to make those very very tough decisions that you and I and every single member of this legislature has not been able to seem to make in order to make change in the worker's compensation system. And we paid this outside group \$250,000.00 or somewhere in that vicinity, to hire the necessary expertise to look at the problem. To hire the actuaries to look at this problem. I don't understand that and I don't make any bones about that. It's a very complicated process. And I said to this gentleman that because I believe the legislature, particularly the members of the Senate, know that we have one chance left to reform worker's comp before it is really to late for businesses in the state. Because of that I hope that we will do the right thing and accept the Blue Ribbon Commission's Report. I'm disappointed tonight that I can not support all these amendments. We've added amendments that maybe are good ideas, maybe they are changes that need to be made, the veteran's exemption for example. Maybe we need to look at time tables and that sort of thing but that is not what we agreed to do. What we agreed to do is accept the Commission's report and then we can come back in the next Legislature if it needs to be changed. We can come back and look and tinker with all the fine tuning that needs to be done. If we're changing the system as dramatically as we're attempting to change this one, there will be fine tuning that will have to be done. We all recognize that. But we've tacked on amendment after amendment today. People say that these amendments aren't going to cost money. I don't see how we can take a 90% change and move it to 112% of income, common sense usually doesn't prevail here, but it seems to me that's a common sense thing that's going to add cost. I am disappointed that I can't vote for this today. I'm disappointed that we're not going to accept the Blue Ribbon Commission Report today. I had hoped that spending taxpayers dollars at \$100.00 a day or whatever it is to have us here might be productive, might be fruitful and might, in the end, have something positive come out of it but I see that's not going to happen and I'm severely disappointed. Thank you.

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

Senator **DUTREMBLE:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I just would like to read a passage from a book here and then I'll tell you who it's from. "My creed is that public service must be more than doing a job efficiently and honestly. It must be a complete dedication to the people and to the nation with full recognition that every human being is entitled to consideration and courtesy. That constructive criticism is not only to be expected but sought. That smears are not only to be expected but thought. That honor is to be earned but not bought." That quote is from November 11, 1953 by Senator Margaret Chase Smith. The statement that I remember and have remembered for a long time is from her autobiography Declaration of Conscience. Maybe a few of us should pick up that book and read it because when I approached this issue, as I approached it many years before this year, I have

done it with my conscience and with people in my district that are of this state and mind. The reason that this Bill cannot pass unless we vote for it is because that's the way our government was set up. This Bill cannot become law unless the people in my district and the people in your districts are represented. And so yes, we did establish this Blue Ribbon Commission to offer recommendations to the legislature. Offer recommendations similarly to a Blue Ribbon Commission that offered recommendations to a legislature in 1985, which we worked on and worked on and worked on. Now I understand that a lot of people think that we haven't done much on worker's comp and that we're finally going to do something with it. I happen to disagree with that. I have to disagree with a Blue Ribbon Commission Report that has items in there that already we're talking about coming back in January to make changes to. I've heard the loyal opposition state that, I've heard lobbyists state that, I've heard the Governor state that. I've even heard members of the Blue Ribbon Commission themselves say that the changes would have to be made. I also understand that the changes to this report were actually being made the day and night before we were coming here to work on this. That's the only reason that work stopped on it because of the deadline. And so for someone to suggest that this here is the final change that we have to work on in this legislature is completely wrong. Completely. As a matter of fact if you look at the savings on this Bill of 12% it's far below, if I'm not mistaken, what was done in 1991. According to the Governor's own figures when he reported to the Governor's Conference that the worker's comp package in 1991 saved \$75 million and far less in 1987 when we saved, I believe, \$60 - \$80 million for the system. And so we have done a tremendous amount of work on worker's comp because someone, for goodness sake pinch me and wake me up, if all those years that I've worked on this I've been sleeping. And so absolutely not. This here is one more attempt, and it's a good one, I have all the respect in the world for the Blue Ribbon Commission, the members of that commission who worked on this. But I also have a great deal of respect for that Labor Management Group who, before the Blue Ribbon Commission, started working on addressing this problem. A group of business people and a group of labor people who worked tirelessly on their own time, travelling the country to try and find a resolution to our problem. Nobody told that other group not to go ahead and work on it. I think that we were looking for someone to go out there and try to find a resolution to worker's comp that we could work with in this legislature. Well I think that we've had two different ideas that were developed that were so close to each other, my goodness if we had given these two groups another couple of weeks or one more week to sit down, I think that they could have come up with something that this whole legislature could have endorsed. But when it appeared that the business labor group was starting to get some credibility around this place, people started attacking them. They started attacking this group, a group of people who had nothing but the good wishes and the resolution to solve the problem of worker's comp. And so we're faced here with a decision, and the decision that faces me as a legislator from District 34. Well, that's a decision that I have to make with my conscience and the people that I represent. The only difference between this

time and the last time is when I vote this time, when I go home, I'm going to sleep. The last time I couldn't. Thank you.

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

Senator CARPENTER: Thank you Mr. President, Ladies and Gentlemen of the Senate. I am very disappointed tonight also. I kind of try to relate this worker's comp bill to what we were working on last April, the jobs bond bill. And to call me a rubber stamp is highly unfair. I think I worked pretty hard on the jobs bill, finding good jobs for my district, jobs for the State of Maine. Maybe my district is different than the rest of your districts, I'm not sure. Sanford has possibly 17,000 people working and the rest of the district probably 10,000, 20,000, 30,000 people working. Everybody talks about how they represent their district, well I want to keep those people employed. My district borders New Hampshire, I'm sure you're all familiar with the Prime Tanning situation, so maybe I won't bore you with all the details. I was there with the meetings when the Governor was there. It is a fact that if they went to New Hampshire they would save worker's compensation insurance payments of \$700,000 to \$800,000. There are other things for them to consider, I agree, but no matter what Maine has to offer, it's not going to offer a savings of \$800,000., whether it's the quality of life or the Town of Berwick would be pretty much devastated with the loss of tax revenue. Right in Springvale one of my best friends own Jagger Mills, him and his cousin, who is a good friend of mine also. They've notified 104 employees that they're looking in New Hampshire. Maybe you can't visualize this but you can hit a golf ball from a portion of my district over the river and into New Hampshire. It's not that big a deal to move. There's an awful lot of interest that has been created and hope in this bill. I spend most of my time at Chamber of Commerce meetings, individual meetings. At Dutchess Footware the employees wanted a meeting. They wanted this Bill passed. I was very hopeful that it would be and it's funny, an awful lot of them understood that it had to be passed without amendments. They said support the Blue Ribbon Commission unamended. That's strange, you didn't believe that they were that interested or knowledgeable about the Bill, you'd say a couple of years ago they weren't. But now they are. I really don't think that you're really representing your districts, unless we're entirely entirely different districts, I'm not even including the problems I'm going to have with the Naval ship yard. I've got two or three thousand people in my district working right there. Pratt and Whitney has two thousand. Hussey Seeding has fifteen hundred. These are national companies. Sprague Electric, the one Sprague plant in Sanford, they have six others throughout the country. The six others total bill for worker's compensation insurance doesn't total the one in Sanford, Maine. I'm very disappointed. I will be voting against the Bill. Thank you.

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

Senator BALDACCI: Thank you Mr. President, Ladies and Gentlemen of the Senate. I sit in this chamber and it's with a very heavy heart because last year we had a tremendous amount of frustration, aggravation, walk outs and everything else when it was this particular issue. I would ask each of the

members in this chamber to remember that time, those issues are still burning in the back of my head. All of those issues, the debate that went on, what had occurred. Where worker's compensation was at that particular point and how frustrated I was when I left this place. We established a Blue Ribbon Commission to look at the issues. The Blue Ribbon Commission came up with a report and I was not a party to it, did not participate in it but sat back and watched it unfold, saying all the time that it had to go through the Blue Ribbon Commission, saying that it was the Blue Ribbon Commission that we wanted and that we appointed and that we participated in. I believe that sincerely. What happened was that they came out with the report then, because of some technicality, or whatever else and concerns that had occurred, they found themselves amending it themselves. At least 29 or 39 times, I'm not sure, that had occurred. But if you look at that document and you look at what has been done to it tonight, and today in the chamber, and remember last year here, where we were on all of these issues. To say that it's 12% or 13% or 20% I don't think is fair. I'm not an actuary, but I would ask the Governor and I would ask the other members here in the chamber on the other side of the aisle, before we get into any partisan bickering of who's to fault here, look at this product. Because in my mind I work through this every day, I work, I pay these premiums, I know I have a sense of this issue and the frustrations of this issue and in my mind if I ever felt we were ever going to increase the cost of worker's compensation over what the Blue Ribbon Commission had recommended, I would be the first to be opposed to it. I'm willing to dialogue with the Governor and the members of the other party to discuss this issue because I believe that the citizens of the state are owed at least that. But I can't, in good conscience, just close my mind and say John you're not intelligent enough to look at this report and to listen to the discussion and say to yourself as you go through the Statements of Fact and the discussion that it's going to make this so bad we've got to vote against it. Because you know there are a lot of groups around this chamber and in the hallways that want to see exactly that happen. So before we pass up the opportunity to make the significant improvements in the system, we should stop and think about it because this may be one of the last times to be able to do that. Because I believe that if you remember those issues that we discussed and debated, and you remember them, and you see what you have in front of you today as the amended product, you have to stop and think that you've really come a long way. You've really come a long, long way. We always talked about the employer having the ability to have a position to review before that went out and went about doctor shopping. We always talked about the attorneys and we always talked about being able to address that. We talked about these issues, they were important issues. We've got a lot of good things that are there but I feel that we're on the verge of going over the cliff and saying, "No, it's not the Blue Ribbon Commission" and setting ourselves up for a lot of discussion and confrontation. And that's fine if that's going to occur and political points are going to be scored, that's fine, but I really believe as a little small business person that what I'm looking at as a product is a significant improvement over where we are. And I think that this body has acted very

responsibly on a great number of those issue that have been proposed to be amended. And I would hate to see us lose that opportunity so I would implore, before everybody talks about vetoes, everybody talks about this being a total waste of money and everything else, is to remember where we were. Because I feel that we will not have the opportunity in the future if it's not addressed now. Thank you.

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

Senator **MATTHEWS:** Thank you Mr. President, Ladies and Gentlemen of the Senate. Since this will probably be one of the last opportunities to speak to my colleagues in this chamber I do want to say just a real quick couple of words about what appears to be happening here. And I echo the sentiments of the good Senator from Penobscot, Senator Baldacci. You know what really, really bothers me in ten years is that the last few years I have seen, as have many of us in this chamber have seen, more divisiveness and division and a lack of even trying to find common ground, middle ground. You can't run a government when you don't strive to find common ground, it doesn't work. I have never been a part of a minority party in this legislature, but I guess what comes to mind if I were a member of a minority, is that you've got your position but you still have to work with the majority. Because when it comes down to the final analysis it isn't whether your minority positions work or our majority agenda works, it's are we doing the right thing for the people outside of the State House. As I go back into private citizenship again, I think I'm probably going to come more in tune with that every day. I think we forget about what we are here to do. To make the State work. The good Senator from York, Senator Carpenter mentioned the bond package. There were many times when I thought we would never get that through, and today I'm still thankful we did. The economy is getting better, slowly. But there are things that we have to do, government has to move, it has to provide a catalyst, an opportunity for the private sector. It has to make that atmosphere, that climate, receptive. Worker's Compensation is a tough issue and I commend the minority party for battling that issue as we in the majority have also. But there are those on the injured side of that equation and those on the business side of that equation that needed redress of real problems. It seems to me we have an opportunity with the package that we've carved out. That has been carved out by a bipartisan commission. That has been worked on by a private sector. I can tell you I remember a conversation with a member of that Ad Hock group back during the Spring. I said we're not done with comp yet because we're going to try to help to make this thing work. And you know, business and labor really did work hard on their own. Boy, that's as American as anything else I can think of. Americans, Maine people, getting together and trying to work on an issue without government. Boy, in my reading of American history, that's what our country is all about. But the public back home, ladies and gentlemen of this Senate, are really going to look hard it seems to me, and no matter what you do to try to fluff up the issue, I don't think it's going to work. I think the people back home are going to say were you able to solve problems with worker's compensation? Were you able to bite the bullet? Were you able to compromise? Were you able to work together? And I think my last little remark, I guess

to the minority, is think about that President that I happen to believe is a Democrat and was your best President of the Republican Party, Abraham Lincoln. Would he have just packed up his bags and headed home if he didn't get everything he wanted? Boy I don't think we'd be here today if he'd had that attitude. He brought the country together and he stroved to save a nation. We don't have that kind of situation before us but ladies and gentlemen I do believe that all of us believe we have an economic situation that requires us to go the extra mile. And I'm not going to address my comments to the second floor, that other separate function of government or part of government, but to the Legislative branch and to the minority party. Don't pack your bags and go home. A lot of hard work has gone into this and you've supplied a lot of that work. There's a chance to carve out some real good changes here. Many of the changes that I voted for and some of the amendments I supported because I'm not a robot. I have a mind, I have people that I serve, constituents in business and labor and I happen to believe that everybody should have an opportunity to partake in our system. Let's not throw it all away. I guess I'm pleading to some degree that that happen, it would be unfortunate to leave the legislature seeing another break down. As the Senator from Penobscot mentioned, I would hope we've had enough breakdowns in government, and I can tell you the public has had enough. The people back home, whether they're in Aroostook County or Kennebec County, Maine or Texas, or wherever in this country, have had enough break down in government. My words of wisdom, my parting comments would be don't go home saying government didn't work. Let's make it work, it can work. It has worked for over two hundred years with a lot of better people than myself, and hopefully future generations that will be in this chamber, that were here because they knew they could make it work. Not for some partisan agenda on either side, not for some hidden agenda, but because the public good stood in the balance. We have fought the extra fight because the good of the public was at stake. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator **WEBSTER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. My good friend from Kennebec County, and I want to say that in all sincerity, in the last year we have become good friends, has made a couple of comments that I think I should respond to. He talks about, and I think rightfully so, that we needed to find a common ground. I can tell you I think we did that several months ago when some of us were demanding that we reform worker's comp. It was suggested by the good President of the Senate and the House and others in this Legislature that we, instead, should have this bipartisan commission. So we had this bipartisan commission who looked at this issue and frankly I think every newspaper in the state, all the people I've talked to in the state in my door to door campaign are saying something has got to be done. I haven't campaigned really in years the way I have this year. I've knocked on 2,500 doors, talked to a lot of people and without question three to one are saying fix worker's comp. So when the Blue Ribbon Commission, this infamous four magical people, came up with a report I was very disappointed. Disappointed is not the word I want to use, I mean to think that all the money we spent and all the time

that was put into this report and we came up with a 10% or 12% savings. I mean frankly that's probably not going to be enough to keep a lot of business people in Maine and a lot of workers employed. It was very disappointing to me to see that we still will have one of the most costly, expensive systems in the country. It's unbelievable to me that these people couldn't come up with a solution some way to solve this problem. So then we're faced with what do we do. As the Senator has said, we try to find a common ground on which we all agree. Maybe not each and every one of you, but there was an agreement that we will try to pass something.

Those who worked together in harmony, it has been suggested, ought to vote for the Blue Ribbon Commission. I'll tell you one thing, I had agreed a long time ago not to put amendments on this Bill, and I can tell you one thing right now, if I had wanted to make political hay and put on amendments about veterans, I would have put some amendments on. I would have put some amendments on that would have put people back to work. But I didn't want to play politics. There's been no politics played by this gentleman I can tell you that right now. I could have played politics, I can tell you a lot of things I could have done to this Bill. Amendments which would have sold to the public, but I didn't do that because we're supposed to be working together. I have no illusions that this Bill, if passed through this body, will see enactment. I've listened to what you have been saying, I'm hopeful there's sincerity here. This Blue Ribbon Commission report is not what Charlie Webster, Senator from Franklin County wants. It surely isn't what the shoe shop workers in my district want, who are very worried, since they too have been offered the opportunity to move to our neighboring state. I've told people, as I've gone campaigning, you know I'm not a nuclear physicist but I do know one thing, whatever New Hampshire is doing I want to do. Relatives of mine live there and there is not a single person I know in New Hampshire who cares any less for workers than we do. They don't want workers to be injured and not protected. They want to make sure that working people in New Hampshire have protection. So whatever they're doing I suggest we ought to adopt. But I didn't offer that amendment, I had sincerely hoped that the Blue Ribbon Commission could come up with a recommendation such as adopting New Hampshire's worker's compensation laws. It seems to me when we're losing all of our jobs to New Hampshire that whatever they're doing must make some sense. We didn't do that, now we're trying to work together. You want to talk about working together, if you want to work together I suggest that tomorrow, when we're back here, we ought to really look at what the Blue Ribbon Commission suggests. And if we want to have amendments, if we want to go through this whole exercise tomorrow then maybe I should offer an amendment which would do some real things to solve this problem. I think that we can reach an agreement. I'm hopeful we can, I'm hopeful that we will adopt the Blue Ribbon Commission because if we don't there's a lot more people in this state. There's nobody in this state who represents more people who work with their hands than I do. More people who work in wood turning mills, shoe factories, in the woods. When I talk about working people I'm talking about people who slave to make six bucks an hour. Those are people that live in my area of the state and those are the people that are going

to lose their jobs. So when we hear about all the concerns for working people I'm pretty proud to say I represent a lot of them. A lot of them I know on a personal basis because I work on their furnaces and I see them and they call me. They're worried, they're scared about what's going to happen, whether or not they're going to have a job next year. This Blue Ribbon Commission report as offered will not save all the jobs but it will be a step in the right direction. The amendments that we have tacked onto this Bill, frankly, are going to make it a lot less likely that we're going to have jobs in this state. But once it's all done we can blame it on whoever the President is, we can blame it on Congress, we can blame it on whoever but I tell the people when I'm door to door and I'm out as I was the day before yesterday, cleaning six furnaces and people talk to me say you know I blame the legislature. I've been trying and some of us have been trying for over ten years to do something to make sure that they have a job. This is the first step in a long staircase that we have to climb. We should pass the Blue Ribbon Commission report as it was suggested and move on. I'm not voting for this Bill as amended. This Bill as amended and printed tonight will never be passed and enacted. So if you're really serious about doing something then pass this. Thank you.

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

Senator MCCORMICK: Thank you Mr. President, Ladies and Gentlemen of the Senate. When we, in 1991, did our last worker's comp reform I swore to myself that I would never vote for another worker's comp reform that contained benefit cuts until we dealt with the problem on the insurance side. Because that is where the problem is. Since 1987 we have had umpteen cuts in worker's comp. We have never touched the place where the problem is, that is reforming the insurance side. And in this whole year long discussion of worker's comp reform, since last October when the Labor Management group started to last spring when we enacted the Blue Ribbon Commission report we had a virtual blackout of information by the Portland Press Herald and other major papers on the rate case which in being held this very minute in which we are seeing incredible evidence by the public advocate and the employers of this state that there has been huge overestimations of the deficit in the residual market and jacking up of loss ratios and almost fraud, if not fraud on the insurance side. Now the only thing in this Bill that guarantees that there are any savings contained in this Bill will go to this State's employers, and not into the pockets of the insurance company, is the Maine Mutual Fund. Senator Kany has been advocating since last spring that is why we should pass this bill. That and only that. Everything else is a smoke screen, everything else is lining insurance companies pockets with needless worker benefits cuts.

The other thing that this Bill does not contain is absolutely no recognition of the main driving force that's driving up worker's comp costs in this state and that is medical inflation. 40% of the increase in worker's comp costs is medical inflation. Where is the solution? Well you'll hear a lot of the solution today and in the coming year and where the solution to that is universal health insurance. That is taking medical completely out of worker's comp and leaving a disability insurance system because I pose to you that one of the

hardships on the employers in this state is that they are being forced to carry two different overlapping insurance policies. One for worker's comp, 40% of which is medical, and the other medical insurance. If we pass universal health insurance system, we will be saving, I predict, 20% to 30% of premium costs on worker's comp.

The good Senator from Franklin worries about all of our jobs going to New Hampshire. I don't think they are all going to New Hampshire, I think they are all going to South America, and our tax dollars are paying to send them there. If you watched 60 Minutes just the other day you would see that billions of my tax dollars have gone to enticing American employers to take jobs from this country and create their factories in Central America. Unheard of, unconscionable, that our tax dollars should be going to this, yet worker's comp continues to be the scapegoat for the very serious structural problems of our economy that we have to start dealing with, including long term investment, risk capital, creating an environment that small businesses can grow in. Creating a worker's comp system that works. I desperately want to vote for this Bill and I am going to vote for what we have in front of us today and I urge you to vote for it as well. Thank you.

THE PRESIDENT: The pending question before the Senate is **PASSAGE TO BE ENGROSSED AS AMENDED** in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **PASSAGE TO BE ENGROSSED AS AMENDED**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators **BALDACCI, BERUBE, BRANNIGAN, CLARK, CLEVELAND, DUTREMBLE, ESTES, ESTY, KANY, MATTHEWS, MCCORMICK, MILLS, TITCOMB, TWITCHELL**

NAYS: Senators **BUSTIN, CAHILL, CARPENTER, COLLINS, CONLEY, EMERSON, FOSTER, GAUVREAU, GILL, GOULD, HOLLOWAY, LUDWIG, PEARSON, RICH, SUMMERS, THERIAULT, VOSE, WEBSTER, THE PRESIDENT - CHARLES P. PRAY**

ABSENT: Senator **BOST**

RESIGNED: Senator **BRAWN**

14 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 1 Senator being absent, and 1 Senator having resigned, **PASSAGE TO BE ENGROSSED, as Amended** without reference to a Committee in **NON-CONCURRENCE, FAILED**.

Sent down for concurrence.

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

PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Create Jobs for the State"

H.P. 1785 L.D. 2465

Committee on **TAXATION** suggested and **ORDERED PRINTED**.

Comes from the House, under suspension of the Rules, **READ TWICE** and **PASSSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-1366)**, without reference to a Committee.

Which was, under suspension of the Rules, **READ**

ONCE, without reference to a Committee.

House Amendment "B" (H-1366) **READ** and **ADOPTED**, in concurrence.

Which was, under suspension of the Rules, **READ A SECOND TIME** and **PASSSED TO BE ENGROSSED, as Amended**, without reference to a Committee, in concurrence.

Which was **PASSSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-1366)**, without reference to a Committee, in concurrence.

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

COMMITTEE REPORTS

House

Ought Not to Pass

The following **Ought Not to Pass** Report shall be placed in the Legislative Files without further action pursuant to Rule 15 of the Joint Rules:

From the Committee on **HOUSING & ECONOMIC DEVELOPMENT** Bill "An Act to Provide Skills Training for Unemployed Workers"

H.P. 1772 L.D. 2454

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

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

SUBJECT: Report of the Commission to Study a Long-term Disability Program for the Maine State Retirement System Members

In 1991, by Resolve c. 48, the Legislature established the Commission to Study a Long-Term Disability Program for the Maine State Retirement System Members. Pursuant to its legislative charge, the Commission studied the requirements of the Older Workers Benefit Protection Act and of the Maine State Retirement System disability plans, in order to discharge its responsibilities to "develop an alternative program...that approximates the overall cost of the present Maine State Retirement disability programs", to "recommend modifications to present Maine State Retirement System disability programs as determined appropriate", and to "submit its findings with any recommended legislation" to the Legislature.

The result of the Commission's work is two reports, one by a four-member Majority and one by a three-member Minority. These reports, with legislative amendments implementing each, are attached.

The Commission wishes to state its distress at the refusal of the United States Equal Employment Opportunity Commission to adopt rules or issue regulatory guidance that would have enabled the Commission to consider other approaches to establishing a non-discriminatory disability plan having the least cost impact on employers and the least benefit impact for employees. The Commission