

# 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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#### **SECOND CONFIRMATION SESSION**

May 20, 1992

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#### **THIRD CONFIRMATION SESSION**

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#### **FOURTH SPECIAL SESSION**

October 16, 1992

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#### **FOURTH CONFIRMATION SESSION**

November 19, 1992

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#### **HOUSE AND SENATE LEGISLATIVE SENTIMENTS**

December 5, 1990 to December 1, 1992

On further motion by same Senator, the Senate RECEDED from its action whereby it ADOPTED House Amendment "C" (H-1340), in concurrence.

On further motion by same Senator, House Amendment "C" (H-1340) INDEFINITELY POSTPONED in NON-CONCURRENCE.

On motion by Senator ESTY of Cumberland, Senate Amendment "D" (S-801) READ and ADOPTED.

On motion by Senator COLLINS of Aroostook, the Senate RECEDED from its action whereby it ADOPTED House Amendment "B" (H-1339), in concurrence.

On further motion by same Senator, House Amendment "B" (H-1339) INDEFINITELY POSTPONED in NON-CONCURRENCE.

Which was PASSED TO BE ENGROSSED, as Amended, without reference to a Committee, in NON-CONCURRENCE.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

COMMITTEE REPORTS

Senate

Pursuant to Joint Rule 13

From the Committee on BANKING & INSURANCE on Bill "An Act to Deregulate Workers' Compensation Insurance Voluntary Market Rates and to Establish the Workers' Compensation Employers' Mutual Fund"

S.P. 965 L.D. 2442

Which was received by the Secretary of the Senate on October 3, 1992 pursuant to Joint Rule 13.

Senator MCCORMICK of Kennebec moved that Bill and Accompanying Papers be RECOMMENDED to the Committee on BANKING & INSURANCE.

On further motion by same Senator, Tabled until Later in Today's Session, pending motion by same Senator to RECOMMIT Bill and Accompanying Papers to the Committee on BANKING & INSURANCE.

Senate at Ease

Senate called to order by the President.

Senator BUSTIN of Kennebec was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator TWITCHELL of Oxford, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

Senate at Ease

Senate called to order by the President.

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

PAPERS FROM THE HOUSE Non-concurrent Matter

Bill "An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws" (Emergency)

H.P. 1783 L.D. 2464 (S "D" S-801)

In House, October 3, 1992, PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENTS "B" (H-1339) AND "C" (H-1340) AS AMENDED BY HOUSE AMENDMENTS "E" (H-1350) AND "H" (H-1356) thereto, without reference to a Committee, in NON-CONCURRENCE.

In Senate, October 5, 1992, PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "D" (S-801), without reference to a Committee, in NON-CONCURRENCE.

Comes from the House, FAILING OF PASSAGE TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "P" (H-1369) AND SENATE AMENDMENT "D" (S-801), without reference to a Committee, in NON-CONCURRENCE.

Senator COLLINS of Aroostook moved that the Senate INSIST.

Senator VOSE of Washington moved that the Senate RECEDE from its action whereby the Bill was PASSED TO BE ENGROSSED AS AMENDED, without reference to a Committee, in NON-CONCURRENCE.

Senator KANY of Kennebec requested a Division.

THE PRESIDENT: The pending question before the Senate is the motion of Senator VOSE of Washington, that the Senate RECEDE from PASSAGE TO BE ENGROSSED AS AMENDED, without reference to a Committee, 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.

5 Senators having voted in the affirmative and 24 Senators having voted in the negative, the motion of Senator VOSE of Washington, to RECEDE from PASSAGE TO BE ENGROSSED AS AMENDED, without reference to a Committee, in NON-CONCURRENCE, FAILED.

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

Senate at Ease

Senate called to order by the President.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

On motion by Senator CLEVELAND of Androscoggin, 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:

ENACTORS

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

Emergency

An Act to Reform the Workers' Compensation Act and Workers' Compensation Insurance Laws

H.P. 1783 L.D. 2464 (S "D" S-801)

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 Kennebec, Senator McCormick.

Senator MCCORMICK: Thank you Mr. President, Ladies and Gentlemen of the Senate. I don't want to speak very long but I do want to read something into

the record. One of the biggest issues for me in this Bill has been the automatic discontinuance language and I have gone round and round with the good Senator from Androscoggin, Senator Gauvreau. I have spoken to the Assistant Attorney General, I have spoken to the Attorney General several times about it and it is my interpretation, and theirs and the Superintendent's of Insurance interpretation that the automatic discontinuance language that we will be voting on tonight contains the right to a hearing before benefits can be cut off in all cases. I would like to, in other words, to put it in a little bit more legal jargon, the compensation scheme referred to in Section 205 of Senate amendment "D", is the early pay compensation payment scheme referred to in the definitional section of the Bill under Section 102, sub-section 7, and includes the scheme enumerated in Section 205, sub-section 7, the memorandum of payment. I fear, because there has been all this discussion back and forth for days about this, and because it is such an important issue, it's one that is very basic to our constitutional rights as Americans, the right of due process, I fear that because we have not made this clear enough in this legislation that there will be litigation on this. That there will have to be litigation on this. If there is, I feel it's important, to read into the record, that I am voting for this Bill because I feel that everyone who is receiving payments is entitled, under the wording of this Bill, under Section 205, to a hearing before a hearing officer before those benefits can be cut off. My opinion is borne out by my conversations with the Attorney General and their conversations with the Superintendent of Insurance. 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 from the good Senator from Kennebec, Senator McCormick, and her diligent work on this legislation to assure that working men and women have at least a modicum of fundamental fair play and due process accorded them prior to a summary cessation of their compensation benefits. Having said that I must share with you my misgivings as to the advice she has received and my belief that, in fact, the language of L.D. 2464 as amended does not provide that level of protection to injured workers in our state. Let me first of all state, I suppose, the obvious. Worker's Compensation is uniquely statutory in nature and, as you may know, working men and women do not have the right to secure compensation from their employers at common law, judge made law, under the now nefarious fellow servant rule. In the early part of this century reform swept across the American populace in many states, this state included, and placed into effect Worker's Compensation statutes. Any rights of working people and the responsibility of employers to pay compensation is governed solely by the provisions of our rules. That is important to note because if there should be any interests in the law, areas the statute does not cover, the courts are without power, without judicial authority to fill in the blanks, as it were. A student of Maine jurisprudence would note oft times the law court, in reviewing our scheme of workers' compensation, expresses regret at the lack of clear legislative intent and that does prompt the litigation that the Senator from Kennebec, Senator McCormick, made reference to in her presentation to

you.

In 1983 I had the opportunity to be in this body, or in the other body, and this legislature did, in fact, offer then what has become a biennial right of passage which is to amend our state's workers' compensation laws. In 1983 we gave birth to the early payment system and one of the central tenets of the early payment system was the notion that an employer had a discreet period of time, fourteen days to be exact, to investigate a claim and to decide if the claim was worthy to, in fact, make payment and our statute also allowed the employer thirty additional days in which to investigate the claim and if found to be nonmeritorious to file a notice of controversy. That can be found in Title 39 MRSA, Section 51B for those who are interested. This scheme, or this methodology of early payment was referred to in this statute as a compensation payment scheme. That legislative apparatus remained in force until the legislative provisions of last summer. As you know, as of October 17, 1991, the reforms that were adopted last year took effect. Foremost among the reforms of last year was aggregation of the early pay system, and in its place was a system of payment referred to as "payment without prejudice", which simply meant that an employer or an insurance company could, in fact, make payments to an injured worker and could, at any time, cease making those payments unless there had been an intervening Commission decree or order. Thus the term, "payment without prejudice". The statute, in fact, states that any payments made by an employer pursuant to this section, i.e. the section governing payment without prejudice, cannot be construed as an admission of liability on its part. Given that as history, those who will come after us, persons who will read the statute, must discern whether or not the automatic discontinuance language which is set forth in Section 205 of L.D. 2464 would, in fact, in some circumstances allow an automatic discontinuance when a worker is receiving benefits. Now you'll note on Senate Amendment "D" to L.D. 2464 does state under Section 205 that "if no order or award of compensation or compensation scheme has been entered, then in that event the employer may discontinue or reduce benefits no earlier than 21 days from the date it mails the notice to the injured worker". So very clearly, the Bill states that if there is an order, and we know that an order, in fact, is an order of the Board, or if there is an award of compensation, and of course that can only flow from petition for award of compensation once again issued by the Board, or if there is a "compensation scheme", as opposed to a compensation payment scheme, then in those three circumstances, there can be no automatic discontinuance. We know further, that since there is no more early payment system, we know that there can be no compensation schemes for any injuries arising after 10/17/91. So it can be stated with unequivocal force that any worker in our state who sustained a work related injury on or after 10/17/91, is not governed, could not be governed by the early payment system and therefore a worker receiving benefits from an insurance company under payment without prejudice can, and would be, subject to automatic discontinuance. That, I think, cannot be controverted. The issue is whether a person receiving benefits under the early payment system, pursuant to memorandum of payments, can be subject to an automatic discontinuance. On this it can be

stated, at best, that some persons reviewing our statutory scheme have offered the opinion that memorandum of payment, herein after referred to as a MOP, does in fact afford injured workers service and protection as to fall within the realm of a compensation payment scheme. Many others, including our legislative staff, and including me take a different perspective and believe the language cannot be read in that fashion. That a MOP is an action without legal significance and therefore a worker receiving benefits under a MOP for injuries occurring between 1983 and 10/17/91 could be subject to an automatic discontinuance.

That interpretation of the Act is bolstered, I would argue, by the very fact that we have language in the Bill which says "if no order or award of compensation or compensation scheme has been entered then the employer can discontinue", seems to me that if, in fact, it was understood, that payments to workers under MOP's would not be cut off absent of intervening Board action, there would be no need for this language. To some people, at 11:22 in the evening, this might be a rather dry, drab, unimportant, even boring legal point. But you know what? If you were a worker who happened to have the misfortune to be injured in our state and who happens to be getting benefits, automatically cut off, it would lose its dry, drab, esoteric composition. In fact, it would be the matter of the highest moment. It just seems to me that you might want to have a clear, unequivocal, statement in statute as to what your rights and responsibilities were. But alas, we will not get them. At the very best we will have an equivocal statement which can be interpreted in different ways. Thus, there will likely be, as was mentioned before, litigation. All the while, you the injured worker, will have to wait for the court system to run its course. You will not receive benefits for several months, until a decision is made.

Perhaps you detect in my voice this evening a tad of irritation. In truth, I find the process under which this legislation has been crafted to be intolerable. I find the work product before us to be nothing less than inept. Not because it was not made in a sincere in genuine honest effort to make this legislation, but because the methodology under which legislation was crafted would not allow us the time, it would not allow the people of our state to have the opportunity to proffer informed criticism so that we could put together a meaningful piece of legislation. I am all too aware of the rallying cry, "Well, we can always come back next year and fix it", while of course from yours truly, that would not be attained. It seems to me that is not a responsible position to take. If one knows that there are serious flaws in legislation and if one knows that those flaws will likely cause serious harm to individuals, I think as a legislator, one has an obligation, a duty pursuant to our constitutional vows to offer legislation, to offer amendments to remedy the diseased statutory clause. And that, I think, is what most distressed me about the situation. I use the term distress with some precision. For the last five to six weeks, I have been in ill health. I have not been able to sleep an entire night, I have agonized over this legislation, not because of the political calculus of those who have sought to oppose this legislation upon us, but rather because we set up the process which forces us to enact this "not ready for prime time" legislation

this evening. We are told that, as a consequence of our actions last Spring, we, the sovereign of the State of Maine, the legislature, we indelibly delegate our authority to a private think tank of four individuals known as the Blue Ribbon Commission, and that their collective judgement was supreme. That we, by the act of sizing the Blue Ribbon Commission, delegated once and for all any discretion we might have in this area of workers' compensation. Although we, and only us, are elected by the populace. We, and only us, are accountable for our actions. None of the members of the Blue Ribbon Commission have that responsibility, none of them are accountable. For those of you who will return to your districts and campaign for office, for those of you who will be honored to serve in the 116th and subsequent Legislatures, you will, in fact, be held accountable as well you should be. This is mischievous stuff, the legislature, the sovereign, the State of Maine to delegate its authority. One can argue, as some have, "well this is a particularly distressing issue of public policy. We just worked real hard the last five or six years and by golly we can't get it right, we can't reach a consensus. Boy this democratic stuff is just too much for us, let's just delegate our authority. It's very efficient, right to the point, we'll get a quick solution, stamp it into law. We're all set." In the real world, problems as difficult as workers' compensation do not lend themselves to such simplistic resolution. We know from experience that workers' compensation has been a prime political issue in this state for the last ten years and it will almost certainly be for the next ten years. We know that because even if this legislative solution were efficacious, any significant savings in the cost of workers' compensation premiums to Maine employers would not appear for several years. Not until the true thrust in benefit reductions really took hold.

This is the second time in two years that Maine government has embarked upon a significant deviation from the legislatively established mechanism, process, to consider and enact legislation. Last year we were faced with a slightly different problem. Because of the position of the Governor, we were unable to secure the requisite two thirds of our membership to enact a budget. Thus, we went 17 days without a budget in our State. As a result of that, we deviated from the established Committee process, and as many of you recall, we did, in fact, enact in this chamber L.D. 1957 which did, in fact, constitute a significant legislative cost to worker's compensation. That was vetoed, we could not override the Governor's veto. We then entered into an unusual, unorthodox process in an effort to come to a consensus on workers' compensation. Ad Hoc Committees with the Banking and Insurance Committee and the Labor Committee and others were involved in a lengthy process, oft times removed from public review, meeting behind closed doors in an effort to reach a legislative solution. The people of Maine noted accurately that the public's business must be conducted in full public view. That all people of Maine should have an opportunity to approach the Legislature, to offer their wisdom and their commentary on legislation which will affect Maine people. As a direct consequence of last year's criticism, this legislature adopted legislation to open State Government, and to assure that in the future that we would not conduct our business in private. But at the same time, we delegated our

responsibility of crafting a solution on workers' compensation to the Blue Ribbon Commission. A private group, meeting privately on this, outside the glare of public attention. That group fashioned, in private, its proposal which is before us, in large part, this evening. How ironic it is, that some of the leading papers in our state, who so forthrightly opposed the articulation of public policy in private last year, now have urged this legislature to adopt, en masse, the recommendations of the Blue Ribbon Commission. In fact, one paper went so far as to put on its front page, an editorial telling Maine legislators to adopt the recommendation before it was even unveiled for public review. I suppose that only shows others fall prey to sincere but misguided efforts to fashion public policy outside the ordinary, established mechanism. I submit to you, that when this legislature allows itself to deviate from the process which has served our state for 170 years, we invite criticism, we craft poor legislation, and more importantly, we remove ourselves from political accountability. We have not allowed Maine people to have a meaningful opportunity to take part in the drafting of this legislation. I personally find this in poor taste, and repugnant that some would refer to the groups that beseech this legislature for help and intervention in this area, refer to those groups as special interest. Just who are these special interests? They are people who have devoted a large part of their lives to trying to make things better in the area of work related injuries. In some cases they're Commissioners for the Workers' Compensation System. In some cases they're physicians or lawyers or insurance agents or insurance adjusters. They are Maine people who have a right to approach their Government with their concerns, and although it may be the fashion of the moment, it may be politically expedient to cast those terms at those people but this is their government. We are their government. It's a disgrace that we have openly derided their participation in the process.

There are, as we are all too painfully aware, significant problems in this legislation. We have discussed that at length over the past four or five days. It does not seem providential for me to review those this evening. Let me just close my comments with a few final observations. This legislature worked for two years to enact L.D. 66 which is now before Maine people in this fall's election, to prohibit future, unfunded mandates from state government. This action is long since overdue and many members of this chamber deserve credit for their efforts to enact that historic legislation. I suspect though, and I have grave misgivings, I believe that this workers' compensation bill, L.D. 2464 will cause, in large part, a defacto unfunded state mandate. Under the scheme adopted in this Bill to reduce the cost in workers' compensation we have, among other things, sharp limitations on the duration of benefits. For most injured workers the benefits will be capped at 260 weeks, only the fortunate, if I can use that term, one fourth of the injured workers who can squeeze through the threshold into the qualifications for longer term durational benefits will qualify for 800 weeks of benefits. It is certainly true that some workers with partial incapacity can return to the work force after those five years, or whatever period it is, when the benefits have expired, but it is likewise true that

many of those workers will not be able to return to jobs, to work in the job market. Their injuries, although significant, will not meet the definition of Social Security, those workers can have significant and chronic impairment and diminished work capacity and not meet the threshold in Title 42 of the U.S. Code of Social Security which requires that they show they are unable to engage in any substantial gainful activity for a period of at least twelve consecutive months. As a result, those workers will have to apply for welfare or general assistance. So in large part we have a push this evening, what we're doing is basically saying that responsibility for caring for injured workers should be distributed or transferred from the private sector to the public sector, but in this case, the municipal level in the form of welfare or general assistance payments. My other concern is one which I spoke to you about Friday evening, deals with the abrogation that no particular sound reason or policy of the Workers' Compensation Commission and adoption of an informal hearing officer system. I had the honor of serving for the past two years on the Commission studying legal needs, Chaired by our former Senator Edmund Muskie. The Commission is a broad based group of 51 Maine citizens that are experienced in our legal system, from all walks of life; judges, attorneys, criminal justice officers, business people, all sorts of people. Governor McKernan is on the Commission, the Commission issued a report earlier this year and I believe that the words of the report to be considered this evening on the eve of our enactment of this legislation. The Commission noted "it is of prime importance that we remember" and we are not talking about abstract principles here, we are talking about access for the people who help build our state, people who work the land, work the waters, the factories, who fought our wars, who help preserve our institutions, "they should not spend their lives in undignified, impoverished circumstances without access to legal services". Two years ago we learned that 180,000 Maine people, are excluded from our system of justice. For these people justice has been rationed. Justice Leonard Hann once said "if we are to keep our democracy there must be one commandment, thou shalt not ration justice". I fear this evening we are, in fact, rationing justice. We are telling the working people of our state we will ration your justice. We will consign you to a palpably inferior standard of justice, a separate but equal system in the guise of a hearing officer system. This is a monstrous wrong doing. It will cause irreparable harm, I truly believe that in the not too distant future, this legislature will be held to address the wrong, but in the interim, hundreds, I dare say thousands, of Maine people will have suffered needlessly. It is for these reasons, these convictions I hold, Mr. President, that I will be voting in opposition to L.D. 2464 this evening. 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 don't really want to speak tonight. I'm not really angry, but I'm hurt. I'm feeling as powerless as I have ever felt since a child being brought up in poverty. It's a pretty basic, hard feeling to deal with. I'm feeling powerless because a body that I have been elected to, elected to give my vote, to give my deliberation on

one of the most important issues in the State of Maine, has not been allowed to do that, has not been allowed to give that deliberation, and has not been allowed to develop that legislation. I have not had any kind of a compensation on this Bill, on this floor, during these days, that would lead me to believe that anybody is voting for this bill because they think it's right, or because they have thought about it to any extent as to how it is going to affect the people of this State. I am not talking about your injured workers, I am not talking about the people who are going to be put on the poverty rolls that are not there now, I am not talking about the money you're going to find yourself spending to take care of those people, I'm talking about the powerlessness of this Senate and the body down at the other end. I'm talking about having that wrested away from us. When I heard the Governor of this State in an interview allude to the fact, and that is how I interpreted it, I cannot quote you the exact words, that the reason that we are here now is because we're a captive audience, and believe you me, I feel real captive. What he said was, we've got an election to face in a few short days and the only thing we can do is vote his way. We won't be able to say no. Well Governor, I say no. I say no because it is inherently wrong, but further than that, the process has been inherently wrong all through this. I cannot believe the unfairness, the lack of faith that has occurred with my own personal workings in working with the Commissioner who crafted this. On the amendment that changed the termination of 96, 99, 110, I don't know what the number was but it was pretty high up there, termination of 99 workers on one day and the rehiring at will on the next. I worked that amendment out with one of the Commissioners, we agreed when the Bill was presented to the State and Local Government Committee, of course we never had a real public hearing on it in State and Local Government, we never really developed a Bill, we never really said what we wanted to do with the Bill, but I worked on that particular phase and we came to an agreement that, yes, we shouldn't just terminate employees and then hire them the next day but, they said, we want the right, we want the ability, to get rid of the ones we don't want to work. Now that means that my good friend the Senator from Cumberland, Senator Gill and I might work side to side. We might do the same exact job. The Commission doesn't happen to want Senator Gill to continue in her job for whatever reason, maybe her eyes are too blue or her hair is too curly, they can say "good bye" and they can say to me "Hey, we like you" and they would hire me. Where's the fairness, where's the equity, where's the transition. So they agreed that they would knock out that language. Then do you know what they did, they came back in their House Amendment "C" and what they did was dig in to that all over again and they made one third of those unclassified so they could still have that strangle-hold. Now they didn't have that strangle-hold in the original Bill, they agreed that that was wrong and then they put another strangle-hold on. Do you really consider people who would do that as people who are worth the credibility to vote on a Bill that is crafted in that manner? We have slid over the line folks. It's always a very, very thin line in a democracy, always. We have now slid over that line. I'm saddened, I do not understand it, I've talked to people, the only thing

I can get is "it's an election", is the Bill good or bad, "it's an election". What's good in the Bill? "It's an election". Well, that doesn't buy me, you didn't buy me with that. If I lose an election because I refuse to cross over that line, then I lose the election. I want everybody to understand that. I'll fight as hard as I can to come back here because I think my voice is heard and I hope against hope that I won't ever have to feel like that little Miner kid of Sebago Lake, Maine. 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 want to stress and make clear to everybody, and I think I've said this before when dealing with this issue, there are no heroes and villains here, there are no heroes and villains. I think that everybody is going through the same process as I am and as any other Senator when dealing with this issue. I think we all feel a little bit indecisive, a little bit torn about what to do here. I've been looking for reasons to vote no on this Bill, I've been looking for it, but I always come back to voting yes on it. I was looking for reasons to vote no on it simply because I'm sick of the threats, the threats that if you don't vote for this we are going to go after you in this election. The threat in itself is repulsive, there's no need for it in decision making in government, absolutely no need for it. Consider the sources, consider from where they came. I can't control that. None of us can control people who make statements like that. We have to make decisions here on what's before us, not on what somebody else is saying to try to get this legislation passed. Whether it comes from the second floor or a Pravda like newspaper. We have no control over that and I'm as angry as the good Senator from Kennebec, Senator Bustin about some of the tactics that have been used to try to pass this legislation. I come from an area that, in the past, has been destroyed by the loss of jobs. Destroyed in the '60's and '70's by companies moving out, moving South or moving out of the Country. I can remember when our area, out of 200 areas its size in the country, was ranked 200 in the standard of living because of all these companies moving out. So it is a question of jobs and what we have to do along the way is if we have to address this issue of workers' comp., which we've addressed God knows how many times, we have to try to do it in such a way at least when we do something it's not as bad as it could have been if we would have participated. Driving up today I told myself "I'm going to vote No on this", but I was listening to the radio and again Governor Gray went to Prime Tanning to try to entice that company to move across the border and build an \$11 million plant in New Hampshire instead of Maine. I have to be as sensitive to that as I am to the plight of the injured workers. I think we all have to be. If there's one thing that has disturbed me in this whole process, and I think it probably repeats what the good Senator from Kennebec, Senator Bustin, has said, is that during this whole process whenever we talked about what was wrong with the Bill, it was always cost savings, money, dollars. Not once, did I hear the newspapers that have been crying for an up and down vote, not once did I hear them show concern for what we might be doing to the injured workers. Not once. Maybe people were so concerned with an up or

down vote on this Bill, we should have sent it to the people who are going to be affected by it. Maybe we should have had a referendum on it. They didn't want us to work on it anyway, maybe we should have sent it to the people since every person in this State is affected by Workers' Comp. this would have been the best way to do it. Nobody could say we are shirking the responsibility because nobody wants you to do your job. They don't want you to work this Bill. Well I have some concerns about whether or not I could support this Bill, and some of them were addressed, some of them, not all, and the issues that were addressed were not fully addressed to my liking, but you have to weigh one side against the other. That's what I'm doing, but I just want to leave you with this point again, there are no heroes and villains. People are trying to do what's best, we've done this a number of times before and every time the same arguments have come up. This is not the end. Do you think this is going to satisfy everybody? We'll never have a workers' comp. law that will satisfy everybody, I'm convinced of it and I think you are too. I think everybody's trying to proceed in a way that's going to get us on track. We created the Blue Ribbon Commission, I'm not totally satisfied with it. We have made a few changes which they have accepted this last time in earnest. Maybe it's a move in the right direction, maybe it's not, but I think right now we have to move forward. Thank you.

The following proceedings were conducted after 12:01 a.m., Tuesday, October 6, 1992.

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

**Senator CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. With all due respect to the last two speakers, the good Senator from York and the good Senator from Kennebec, I would like to begin by saying I'm really going to miss the good Senator from Androscoggin, Senator Gauvreau, as we're here, probably in our last minutes, of service together. I really have found him to be the moral compass of the chamber. Not, even though I'm the beneficiary of 17 years of education, that I always understand what he says, I know his heart's in the right place and he's always coming, at least from the same perspective as I am, which is probably why we sit to the left of the President. He's really a franchise player and I know I for one and others in this chamber are going to miss him. Like most liberals though, of course, we'll always be on the losing side. Which is why I really don't dare to come out for Mr. Clinton, I'm afraid that's the way things will go for him if I declare my support. In any case turning my attention to this Bill, I really haven't said a lot during the course of the debates here in this chamber mostly because I really wanted to avoid much of the partisan debate that goes on around here in which I am very capable of getting a part. I knew things were going to be different this time simply because of the way things were set up with the Blue Ribbon Commission. Also, because being the beneficiary of a Jesuit education, we're always told, no matter what your own position is, no matter how strongly you feel about something, it is only worth as much as the way you assign to someone else's opinion. You must take into consideration other people's opinions and I know that the vast majority of people in this chamber as is reflected in the votes that have been given, want to see what this Blue Ribbon Commission has given us passed and put this issue behind us. So I have to

take your positions into account, I have to try to come to understand what it is you believe this will do for Maine people. I know many of you, because it is a complex area and for better or for worse, I have some knowledge of how it works, I've actually been in some of the hearings and I've seen these Commissioners at work, I know there has been tremendous troubles in this area but I have incredible respect for these people, most of whom have been appointed by our present Governor. present Governor. They really do the best with the laws that we have given them to work with. Though I know the people in here want to do what is best and probably boil down their feelings about this Commission's report, to making, as the good Senator from Androscoggin said to me the other night, Senator Cleveland, a leap of faith.

I know a little bit about this faith stuff, being Catholic I was told that the trinity was three persons in one God. I guess I believe that but I just can't make a leap of faith on this one. These three wise men just don't cut it as the trinity for me and the more I have looked at their work and the more I have studied this report, which we have been told, just like the commandments, cannot be touched, the more I am troubled by how we have gotten to where we're at, voting on this like we're robots being told we really can't tinker with it. I'm mostly troubled by the cuts, they bothered me the most. I guess I didn't expect that to come out of the process after going through what we went through last year. The cuts are significant, they really are. They're going to hurt a lot of people. We've reduced the average weekly wage \$80.00 or so, it's going to hurt people in paper mill towns. We've taken permanent impairment right out of the statute so if you lose an arm now it's really not worth anything, it's worth nothing. We've taken away people's access to getting whatever benefits they do have, we've taken that away from them because nobody's going to be able to afford a higher counsel to go in and represent them on most cases, it's just not going to happen. I don't know why the workers have been asked to bear the brunt of the savings but they have, though the savings seem to be small. I don't know why the procedures have been changed in such a way as to drag in people who really were hurt before the effective date of this law, the whole automatic discontinuance language, although for the record I want to say I agree with the good Senator from Kennebec just in case a judge ever looks at this, I'm sure that's what the intent is. I do believe that they are going to be subject to having their benefits cut off much more easily than they are now. All these things trouble me by way of changes and cuts and they're going to be very real, very human and they're going to hurt a lot of people that many of us here, you and I, will never know. We'll never see them. They'll just be there in these hearing rooms and have to deal with an insurance agent or an insurance adjuster who knows a lot more about the law than they do. I think that's going to be pretty sad. I'm also very troubled by the way we've just sort of vaporized the Workers' Compensation Commission. I know the good Senator from Kennebec, her heart, from my perspective, is always in the right place, but the people I feel the worst for are people like Doug Beaulieu who's here in the chamber. He works for the Commission and has done an excellent job. I don't know if any of you have ever gone to him with a constituent complaint.



It's pretty hard to understand that system, even I have to refer people to Doug or Dick Dunn or some of the other people who work there. They do a really good job helping people understand this complex system, something that will still remain complex because of all the changes we have made over the years. I want to publicly thank the eleven Commissioners who have given up their law practices, some of them have left very good jobs in the Attorney General's office, and other places. The very human thing that's going to happen to them in a year is they lose their jobs. Those people, too, I know there's been a lot of complaints about workers' compensation but it's not their fault we change the law every two years, it's not their fault at all. They just do their best to interpret what it is that we do pass and to render decisions according to that law. They've done a great job under incredibly stressful circumstances and I hope they do well and are able to find suitable employment after their jobs end. I guess the last thing I would say, and I mean this honestly, when I think about this law and, not to criticize anybody, I bet there aren't many in here who have read this cover to cover. I'm one who looked through the entire draft, being on the Committee with the good Senator from Cumberland, Senator Esty, we sort of had to look through it. All I can think of is if each and every one of us were put on the spot and we were told we had to go see our 35,000 constituents, and I was thinking that would roughly fill Fenway Park. Get out there on second base, get a little microphone in front of you and look around the whole park and say "give me a few minutes because I want to tell you why this is a great law and why this, I believe, is in the best interests of the people of the State of Maine". I really think if every one of us was forced to go out there and do it, on different days, not all at the same time, it would be a pretty tough task to master. Especially if you had to do it in the seventh inning and the Red Sox were behind, like they usually are. It would be pretty difficult. We all have to go home, we all have to do what we think is right and I respect everyone of you here for the opinion you have. The majority of you, I don't agree with you. I hope, I just hope you're right, because there's a lot riding on this. 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. We've listened to debate this evening, and remarks amongst us and I know that everyone has been very sincere in what they have had to say. I think we have to recognize that we do have differences of opinion and are entitled to them and it's important that we express ourselves from time to time on a matter that is so important to all of us in the State of Maine. I know it's difficult, as we shift gears, from a quasi-judicial sort of system to one that is based on an administrative type, with mediation and other remedies, to one that is going to be used and run by the people most interested in it. The people that pay the bills, the employers and the people that receive the benefits, the employees. I happen to think that that's a rather reasonable type of venture to become involved in. It seems to me that the people who have the most at stake ought to have something to say about the way it works, how it's governed, and hopefully it will work. Even those who

are sorry to see the present system dissolved will admit that it's been fraught with a great deal of dissension over a long period of time and much dissatisfaction among the population in general.

So it seems to me tonight that we indeed should make this change, knowing that it will not be perfect, knowing that there will be opportunities to improve upon it and knowing that come January a new legislature will look at what we have done or not done and will make judgement calls. I'd like to say this one thing in particular that has bothered me somewhat, and that has to do with the Blue Ribbon Commission. I think we all recall when we were unable and unwilling to resolve these problems legislatively, we said to ourselves "let's depoliticize this process, let's get somebody from outside whom we respect to see what they can do to resolve the problem that we've had so much difficulty with for the last several years". I know that perhaps some of you didn't agree with that but obviously most of you did because we voted to do it and the administration agreed. Now, when we come to the point in time when we must exercise a judgement call, it seems to me that we're inclined to blame ourselves for not taking a more active part, the Commission for not being, in fact, what we wanted them to be. I think that's a bit unfair, I think we asked them to do this. Our idea behind the whole thing was to depoliticize so that we wouldn't all fight and get frustrated and end up with great dissension but not much happening. Incidentally we have looked at this, the committees of jurisdiction have held public hearings, we've met as committees separately all summer long. The Blue Ribbon Commission conducted hearings and we heard from a lot of different people, they hired experts, actuaries who did studies and they gave it their best shot. I think we ought to recognize that nobody around here is perfect, no legislation is perfect, but we've entered into a new era where we are trying to resolve a problem from a different approach. I suppose it's sort of strange to hear a moderate conservative like me suggest something new, liberals usually do that, but I've been involved in one fashion or another in this workers' comp. issue since my most recent legislative term. I've served on both the Banking and Insurance Committee and the Labor Committee, I've been a small business person all of my life. I've paid the premiums, gone through the process and I've seen the damage that it has done to business in Maine, small businesses in particular. I'm ready for a change. I think that this is the answer. I think we will have disagreements as to what we have done. For example, I'm not sure that I agree with Senator McCormick's statement about legislative intent. I'm not sure the Blue Ribbon Commission would agree with her. I don't know that we can positively say one way or the other what the legislative intent is, absent of a formal Attorney General opinion it would be rather difficult. These things will have to be worked out, they will take time, but it seems to me that for the players involved this time around, the people that are most concerned, the people that pay the bills, the people that receive the benefits, management by a team that is equally divided between management and employees, that we are approaching it from a different viewpoint, I'm optimistic enough to think that it's going to work for the better. 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'll keep my remarks brief tonight, the time is long and most of us I think understand our positions at this point. This has been an incredibly gut wrenching issue for all of us. It's been an issue that we've struggled with all four years that I've served in the Maine Legislature. It has torn us apart as a Legislature, it's torn the State apart in many respects, divided worker and manager, employer and employee, in a way no other issue has done in recent memory. It has, tonight, brought us all together to reach deep inside of us to try to make the decision, popular or unpopular, that seems, in our heart and soul, to be in the best interest of the workers and the businesses of the state we care so much about. It is difficult to describe just how hard it is to make a decision on an issue that affects so many people. We've all struggled the past few days, as well as for the past few years, and now we stand here. I stand here supporting this Bill this evening, supporting the amendment that we've attached to it. I'm not positive that it will work but praying, hoping that it will make a difference in workers' compensation for workers and for businesses to move our state into the future.

My greatest hope, and I believe the hope that every single one of us have, is that this system will work. That this new concept, this new era that we will move into, that says labor, workers, and management, the two real stake holders of the system will be the two bodies, two sets of people, that will make the decision regarding the outcome of worker's comp.. That's the fundamental difference in this change and all the other changes. I have hope that next year we will not see workers' compensation bills from the Governor, we will not see workers' compensation bills from the Republican party, we will not see workers' compensation from the Democratic party, we will see consensus and ideas from the new management and labor board of directors created by this legislation. The reason this legislation, or ideas from this legislation has worked so well in Michigan, is because Michigan has put great faith in the business managers of that state and of the laborers and workers of that state. They developed the ideas and the thoughts and the processes that make workers' compensation effective and fair in that state. That's what we need to do in this state.

As I stand here, should I be fortunate to come back to the next legislature, I will fight and I hope each of you will stand up and fight, and make sure that all of the decisions regarding worker's compensation are developed through consensus by the new board of directors we're creating this evening. It's the only way management and labor can come together in this new era. Let me take a moment as well to mention another group of men and women who worked so hard and dedicated so much of their lives for the past year to helping resolve this issue for us, as a legislature, and for the people of Maine. Those are the people of the Labor and Management Ad Hoc Committee, those 16 individuals, some you have never seen before have given so much of their time and energies to try to make this system work better for all of us and their contributions to this piece of legislation has made a real difference in putting together a piece of legislation that can serve the people, the workers and the employers of this state better. So thank you, those of you who are here and

those of you who are not, it has made a real difference. While they may or may not have agreed with the final product, certainly the final product is a better product because of their efforts. Let me just end tonight by saying to each and every one of you when we all go home tonight, hopeful that we made the right decision, none of us are absolutely sure I believe, but only hoping that we need to, from this point on, work to do everything possible to make sure that this is an issue that can work for the Maine people from this point on. 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. Just a couple of things I wanted to share with you. One is that I agree with Senator McCormick's of Kennebec, interpretation of the automatic discontinuance language and second I want to thank Senator Esty, of Cumberland, for all of his work in the last two years on workers' comp. He has agonized so and certainly without his ability to bring people together and attempt to work toward a consensus we would not have the revolutionary legislation before us that we have this evening. It is indeed revolutionary but it is not that divisive. I find it interesting, reading the print media and seeing on television that one almost got the impression that there was the Legislature over here, and there was the Labor Management Group over there and in another corner was the Blue Ribbon Commission. That really wasn't the way it worked at all. The Blue Ribbon Commission invited anyone to offer information and proposals and the Labor Management Group participated over the entire summer and the Blue Ribbon Commission listened very carefully and adopted all that they felt was appropriate for the State with our history and our potential, from the Labor Management Group. The Legislators were invited to offer proposals and they listened to us, and there were many of us who did just that, so it never was a triangle. It was really people working together, Maine people working together, knowing that we had to radically change a system that did not work and of course the proposal before you tonight for final enactment does include a very changed system. Primarily two major new systems within it moving from the judicial model to the administrative model which, hopefully, can shorten that time frame so that the emphasis can finally be on getting injured people back to work and avoiding accidents, instead of appeal after appeal after appeal and of someone finally getting their benefits. I think this is a much better approach for injured workers and for preventing disability among those who are injured. The "Jobs not Discrimination" buttons really hit what the goal should be, and that is to make certain that everyone who wishes to be productive in a job can be and I think that should be the emphasis and certainly the new Labor Management Workers' Comp Board should focus on that. On definitely making a system that focuses on getting people back to work quickly and occupational help, and returned to work. Eliminating discrimination. It is revolutionary.

The second revolutionary new system will be the Mutual Insurance Company, run by the employers. Responsibility will entirely be employers who will be working with labor on the divisions, focusing on safety, on prevention, on return to work, it's a

revolution and it's a very exciting one and I certainly hope that we are able to enact this legislation tonight. Thank you.

**THE PRESIDENT:** The pending question before the Senate is **ENACTMENT**.

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

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, BOST, BRANNIGAN, CAHILL, CARPENTER, CLARK, CLEVELAND, COLLINS, DUTREMBLE, EMERSON, ESTY, FOSTER, GILL, GOULD, HOLLOWAY, KANY, LUDWIG, MATTHEWS, MCCORMICK, MILLS, RICH, SUMMERS, TITCOMB, TWITCHELL, WEBSTER

**NAYS:** Senators BUSTIN, CONLEY, GAUVREAU, PEARSON, THERIAULT, VOSE, THE PRESIDENT - CHARLES P. PRAY

**ABSENT:** Senator ESTES

**RESIGNED:** Senator BRAUN

This being an Emergency Measure and having received the affirmative vote of 26 Members of the Senate, with 7 Senators having voted in the negative, and 26 being more than two-thirds of the entire elected Membership of the Senate was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

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

**ENACTORS**

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

An Act to Create Jobs for the State

H.P. 1785 L.D. 2465  
(H "B" H-1366)

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

Senate at Ease

Senate called to order by the President.

**ORDERS OF THE DAY**

On motion by Senator **MCCORMICK** of Kennebec, the Senate removed from the Later Today Assigned Table the following:

Bill "An Act to Deregulate Workers' Compensation Insurance Voluntary Market Rates and to Establish the Workers' Compensation Employers' Mutual Fund"

S.P. 965 L.D. 2442

Tabled - October 5, 1992, by Senator **MCCORMICK** of Kennebec

Pending - Motion by same Senator to **RECOMMIT** Bill and Accompanying Papers to the Committee on **BANKING & INSURANCE**

(In Senate, October 5, 1992, Received by the Secretary from the Committee on **BANKING & INSURANCE**, Pursuant to Joint Rule 13.)

Senator **MCCORMICK** of Kennebec requested and received leave of the Senate to withdraw her motion to **RECOMMIT** Bill and Accompanying Papers to the Committee on **BANKING & INSURANCE**.

On further motion by same Senator, Bill and Accompanying Papers **INDEFINITELY POSTPONED**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

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

**COMMUNICATIONS**

The Following Communication:

**STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE 04333**

October 3, 1992

To The Honorable Members of the 115th Legislature:

I am returning, without my signature or approval, S.P. 929, L.D. 2384, "An Act to Restructure State Government." This legislation would realign the functions of the State Planning Office, the Office of the Governor, the Department of Human Services, and the Department of Mental Health and Mental Retardation. Although I support efforts to gain cost-savings and efficiency in state government through restructuring, I am concerned that this legislation will realize neither of these goals.

To achieve effective restructuring proposals, the Legislature passed and I signed into Public Law 1991, chapter 139 which established a commission of private members to examine restructuring State Government to maximize efficiency and cost savings. After six months of intense examination of government structure and functions, the Special Commission on Governmental Restructuring presented its findings, which I endorsed. The Legislature, in its consideration of the resulting legislation, dismissed most of the proposals. This piece of legislation, as a whole, was presented at the very last minute without consideration of the ramifications to programs or client groups, and without knowing if any cost savings would be achieved.

L.D. 2384 establishes yet another study committee to examine the shifting of functions between the Departments of Human Services and Mental Health and Mental Retardation. To date, there have been a multitude of boards, commissions, Blue Ribbon Commissions, legislative oversights and study groups which have examined these issues; I am not willing to devote my agencies' staffs, funds, or time during this critical fiscal period to yet another study which quite possibly could end up as meaningless exercise. The Special Commission on Government Restructuring endorsed a proposal to begin the immediate realignment of the Departments of Human Services and Mental Health and Mental Retardation. It was drafted with tremendous input from the agencies, client groups, advocates, legislators, and past study commissions with a clear understanding of the impact of the proposal. I will stand by the Special Commission's recommendation.

L.D. 2384 also dismantles the State Planning Office and moves the Planning Office director to the Office of the Governor. I consider this a direct violation of the separation of powers as prescribed in Article III of the Constitution of Maine. The Legislature should not dictate the personal staff or the organizational structure of the Office of the Governor. As chief executive of this state, the Governor should have absolute authority over the administration of the Office of the Governor.