

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 658

H.P. 488

House of Representatives, February 11, 2003

### **An Act To Improve the Operation of the Workers' Compensation Board**

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Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative SMITH of Van Buren.  
Cosponsored by Senator EDMONDS of Cumberland and  
Representatives: CANAVAN of Waterville, DUPLESSIE of Westbrook, HATCH of  
Skowhegan, HUTTON of Bowdoinham, PATRICK of Rumford, Senator: MARTIN of  
Aroostook.

**Be it enacted by the People of the State of Maine as follows:**

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**Sec. 1. 39-A MRSA §151, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**1. Board established.** Pursuant to Title 5, section 12004-G, subsection 35, the Workers' Compensation Board is established as an independent board composed of 8 members. The members of the board must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review by the joint standing committee of the Legislature having jurisdiction over ~~state-and-local-government~~ labor matters and confirmation by the Legislature. Notwithstanding the provisions of Title 3, section 151, the designated committee shall complete its review of the appointments of the Governor within 15 days of the Governor's written notice of appointment and the vote of the Legislature must be taken no later than 7 days after the vote of the designated committee.

Four members of the board must be representatives of management and 4 members must be representatives of labor. All management representatives must be appointed from a list provided by the Maine Chamber of Commerce and Industry or other bona fide organization or association of employers. All labor representatives must be from a list provided by the Executive Board of the Maine AFL-CIO or other bona fide labor organization or association of employees representing at least 10% of the Maine work force. Any list submitted to the Governor must have at least 4 times the number of names as there are vacancies for the group represented by the vacancies.

A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

A member of the board may not be a lobbyist required to be registered with the Secretary of State, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system.

Members of the board hold office for staggered terms of 4 years, except for the initial members of the board. The terms of one member representing management and one member representing labor expire February 1st of each year. A member may not serve for more than 2 full terms.

The Governor shall initially designate one member representing management and one member representing labor for terms expiring February 1, 1994; one member representing management and one member representing labor for terms expiring February 1, 1995;

2 one member representing management and one member representing  
labor for terms expiring February 1, 1996; and one member  
4 representing management and one member representing labor for  
terms expiring February 1, 1997.

6 **Sec. 2. 39-A MRSA §151, sub-§5**, as enacted by PL 1991, c. 885,  
Pt. A, §8 and affected by §§9 to 11, is amended to read:

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10 **5. Voting requirements.** The board may take action only by  
majority vote of its membership. ~~Decisions--regarding--the~~  
12 ~~employment--of--an--executive--director--and--the--appointment--and~~  
~~retention--of--hearing--officers--require--the--affirmative--votes--of--at~~  
14 ~~least--2--board--members--representing--management--and--at--least--2~~  
~~board--members--representing--labor--~~

16 **Sec. 3. 39-A MRSA §152, sub-§3**, as enacted by PL 1991, c. 885,  
Pt. A, §8 and affected by §§9 to 11, is amended to read:

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20 **3. Employment of executive director.** The board shall  
employ an executive director who shall conduct the day-to-day  
22 operations of the board in accordance with policies established  
by the board and otherwise implement board policy. Except as  
24 otherwise provided, the executive director shall, ~~at--the~~  
~~direction--of--the--board,~~ appoint the directors of the bureaus and  
26 divisions of the board and their deputies and assistants and hire  
personnel as necessary to administer this Act, subject to the  
28 Civil Service Law. The executive director ~~is--an--unclassified~~  
~~employee--serving--at--the--pleasure--of--the--board~~ holds office for a  
30 5-year term. The executive director may be removed only by a  
vote of a majority of the board.

32 **Sec. 4. 39-A MRSA §152, sub-§4**, as amended by PL 1997, c. 486,  
§2, is further amended to read:

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36 **4. Employment of general counsel.** The board shall employ a  
general counsel, who is the legal adviser to the board and who  
38 shall perform such other duties as may be assigned by the board,  
and assistants as necessary. The general counsel ~~and--assistants~~  
40 ~~to--the--general--counsel--are--unclassified--employees,--serve--at--the~~  
~~pleasure--of--the--board--and--are--not--subject--to--the--Civil--Service~~  
42 Law holds office for a 5-year term. The general counsel may be  
removed only by a vote of the majority of the board. Except as  
44 otherwise provided, the general counsel shall hire personnel as  
necessary to administer the general counsel's duties under this  
46 Act, subject to the Civil Service Law.

48 The ~~board~~ general counsel shall appoint a staff attorney to  
advise the advocates pursuant to section 153-A. The staff  
50 attorney is subject to the Civil Service Law and works under the  
direction of the general counsel.

2           **Sec. 5. 39-A MRSA §152, sub-§§5 and 6**, as enacted by PL 1991,  
c. 885, Pt. A, §8 and affected by §§9 to 11, are repealed.

4           **Sec. 6. 39-A MRSA §152-A** is enacted to read:

6           **§152-A. Duties of executive director**

8           **1. Preparation of budget.** Subject to review and approval  
10 by the board, the executive director shall submit the biennial  
12 budget in accordance with Title 5, sections 1665 and 1666 and  
shall submit the annual budget in accordance with Title 5,  
section 1667.

14           **2. Hearing officers.** The executive director shall obtain  
16 the services of persons qualified by background and training to  
18 serve as hearing officers, who shall conduct all adjudicatory  
20 hearings arising under section 315, all proceedings ancillary to  
such hearings except as otherwise provided in this Title and any  
22 other adjudicatory proceedings of the board as assigned at the  
discretion of the executive director. The services of hearing  
officers may be obtained by either of the following methods:

24           **A.** The executive director may contract for the services of  
hearing officers. If the executive director contracts  
26 directly with individual hearing officers, they must be paid  
reasonable per diem fees for their services plus  
28 reimbursement of their actual, necessary and reasonable  
expenses incurred in the performance of their duties,  
30 consistent with policies established by the board; or

32           **B.** The executive director may appoint hearing officers to  
serve for 5-year terms. Hearing officers appointed pursuant  
34 to this paragraph are not subject to the Civil Service Law,  
are subject to removal by the executive director for good  
36 cause shown and may be appointed for additional 5-year terms  
at the pleasure of the executive director.

38           **Sec. 7. 39-A MRSA §154, sub-§2**, as enacted by PL 1991, c. 885,  
40 Pt. A, §8 and affected by §§9 to 11, is amended to read:

42           **2. Expenditures.** Expenditures Except as provided in  
subsection 2-A, expenditures from the Workers' Compensation Board  
44 Administrative Fund are subject to legislative approval and  
allocation in the same manner as appropriations are made from the  
46 General Fund. The joint standing committee of the Legislature  
having jurisdiction over appropriations and financial affairs  
48 shall approve the allocation.

50           **Sec. 8. 39-A MRSA §154, sub-§2-A** is enacted to read:

