

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1909

S.P. 750

In Senate, March 4, 2004

An Act To Promote Decision Making Within the Workers' Compensation Board

(EMERGENCY)

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator EDMONDS of Cumberland. (GOVERNOR'S BILL)
Cosponsored by Representative TREADWELL of Carmel and
Senators: BLAIS of Kennebec, DAVIS of Piscataquis, Representatives: BRUNO of Raymond,
DUPREY of Medway, FISCHER of Presque Isle, RICHARDSON of Brunswick, SAVIELLO
of Wilton, WATSON of Bath.

2 **Emergency preamble. Whereas,** Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** waiting for the 90-day period to elapse would cause
undue delay in the appointment of the Executive Director of the
Workers' Compensation Board and the realignment of the board to
8 enable a simple majority of the board to make decisions; and

10 **Whereas,** it would be detrimental to claimants and employers
and would waste state resources to perpetuate unnecessarily an
12 inefficient, and often deadlocked, administrative structure; and

14 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
16 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
18 safety; now, therefore,

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

22 **Sec. 1. 2 MRSA §6, sub-§1,** as amended by PL 2003, c. 469, Pt.
A, §1, is further amended to read:

24 **1. Range 91.** The salaries of the following state officials
and employees are within salary range 91:

28 Commissioner of Transportation;

30 Commissioner of Conservation;

32 Commissioner of Administrative and Financial Services;

34 Commissioner of Education;

36 Commissioner of Environmental Protection;

38 Executive Director of Dirigo Health;

40 Commissioner of Human Services;

42 Commissioner of Behavioral and Developmental Services;

44 Commissioner of Public Safety;

46 Commissioner of Professional and Financial Regulation;

48 Commissioner of Labor;

50 Commissioner of Agriculture, Food and Rural Resources;

2 Commissioner of Inland Fisheries and Wildlife;
4 Commissioner of Marine Resources;
6 Commissioner of Corrections;
8 Commissioner of Economic and Community Development; ~~and~~
10 Commissioner of Defense, Veterans and Emergency Management;
12 and
14 Executive Director, Workers' Compensation Board.

16 **Sec. 2. 2 MRSA §6-E, sub-§1**, as enacted by PL 1993, c. 145,
§1, is repealed.

18 **Sec. 3. 24-A MRSA §3706, sub-§2**, as amended by PL 1991, c.
20 885, Pt. D, §2, is further amended to read:

22 **2. Statistical and actuarial data.** The company ~~must~~ shall
24 compile and maintain statistical and actuarial data related to
the determination of proper premium rate levels, the incidence of
26 work-related injuries, costs related to those injuries and any
other data that the company considers desirable. The company
28 ~~must~~ shall provide this data to the Superintendent of Insurance,
the ~~Chair~~ Executive Director of the Workers' Compensation Board
and the Department of Labor annually and upon request.

30 **Sec. 4. 39-A MRSA §102, sub-§5**, as enacted by PL 1991, c. 885,
32 Pt. A, §8 and affected by §§9 to 11, is amended to read:

34 **5. Board; board member.** "Board" means the Workers'
36 Compensation Board created by section 151 and includes a designee
of the board. "Board member" means any member of the board,
including the ~~chair~~ executive director.

38 **Sec. 5. 39-A MRSA §151, sub-§1**, as amended by PL 2003, c. 382,
40 §1, is further amended to read:

42 **1. Board established.** Pursuant to Title 5, section 12004-G,
subsection 35, the Workers' Compensation Board is established as
44 an independent board composed of ~~8~~ 7 members. The members of the
board, including the executive director, must be appointed by the
46 Governor within 30 days after a new board member is authorized or
a vacancy occurs, subject to review by the joint standing
48 committee of the Legislature having jurisdiction over labor
matters and confirmation by the Legislature. Notwithstanding the
50 provisions of Title 3, section ~~151~~ 157, the designated committee
shall complete its review of the appointments of the Governor

2 within 15 days of the Governor's written notice of appointment
and the vote of the Legislature must be taken no later than 7
4 days after the vote of the designated committee.

6 ~~Four members of the board must be~~ The board consists of 3
representatives of management and ~~4 members must be,~~ 3
8 representatives of labor and the executive director appointed
10 pursuant to subsection 1-A. All management representatives must
be appointed from a list provided by the Maine Chamber of
12 Commerce and Industry or other bona fide organization or
association of employers. All labor representatives must be from
14 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
16 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.

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

22 A member of the board may not be a lobbyist required to be
24 registered with the Secretary of State Commission on Governmental
Ethics and Election Practices, a service provider to the workers'
26 compensation system or a representative of a service provider to
the workers' compensation system.

28 Members of the board representing management and labor hold
30 office for staggered terms of 4 years, commencing and expiring on
February 1st, except for the ~~initial members of the board~~ initial
32 appointees and members appointed to fill unexpired terms. The
terms ~~of one member representing management and one member~~
34 ~~representing labor expire February 1st of each year.~~ A member
representing management or labor may not serve for more than 2
36 full terms.

38 ~~The Governor shall initially designate one member representing~~
~~management and one member representing labor for terms expiring~~
40 ~~February 1, 1994; one member representing management and one~~
~~member representing labor for terms expiring February 1, 1995;~~
42 ~~one member representing management and one member representing~~
~~labor for terms expiring February 1, 1996; and one member~~
44 ~~representing management and one member representing labor for~~
~~terms expiring February 1, 1997.~~

46 **Sec. 6. 39-A MRSA §151, sub-§1-A** is enacted to read:

48 1-A. Executive director. The Governor shall appoint an
50 executive director, who is the chair and chief executive officer

2 of the board. The executive director serves at the pleasure of
3 the Governor. Except as otherwise provided, the executive
4 director shall, at the direction of the board, hire personnel as
5 necessary to administer this Act, subject to the Civil Service
6 Law.

7 **Sec. 7. 39-A MRSA §151, sub-§§2 and 3,** as enacted by PL 1991,
8 c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

10 **2. Removal.** Board members representing management and labor
11 hold office for the terms provided, unless removed, and until
12 their successors are appointed and qualified. They must be sworn
13 and may be removed by the Governor for inefficiency, willful
14 neglect of duty or malfeasance in office, but only with the
15 review and concurrence of the joint standing committee of the
16 Legislature having jurisdiction over ~~state-and-local-government~~
17 labor matters upon hearing in executive session or by
18 impeachment. Before removing a board member, the Governor shall
19 notify the President of the Senate and the Speaker of the House
20 of Representatives of the removal and the reasons for the removal.

22 **3. Vacancies.** If a vacancy occurs during a term of a
23 management or labor member, the Governor shall appoint a
24 replacement to fill the unexpired part of the term. The
25 replacement must be from the group represented by the member
26 being replaced. ~~In case the office of chair becomes vacant, the~~
27 ~~board member who has served for the longest period of time shall~~
28 ~~act as chair until the Governor makes an appointment to fill the~~
29 ~~vacancy.~~

30 **Sec. 8. 39-A MRSA §151, sub-§4,** as enacted by PL 1991, c. 885,
31 Pt. A, §8 and affected by §§9 to 11, is repealed.

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

34 **5. Voting requirements; meetings.** The board may take action
35 only by majority vote of its membership. ~~Decisions regarding the~~
36 ~~employment of an executive director and the appointment and~~
37 ~~retention of hearing officers require the affirmative votes of at~~
38 ~~least 2 board members representing management and at least 2~~
39 ~~board members representing labor.~~ The board may hold sessions at
40 its central office or at any other place within the State and
41 shall establish procedures through which members who are not
42 physically present may participate by telephone or other
43 remote-access technology. Regular meetings may be called by the
44 executive director or by any 4 members of the board, and all
45 members must be given at least 7 days' notice of the time, place
46 and agenda of the meeting. A quorum of the board is 4 members,
47
48

2 but a smaller number may adjourn until a quorum is present.
3 Emergency meetings may be called by the executive director when
4 it is necessary to take action before a regular meeting can be
5 scheduled. The executive director shall make all reasonable
6 efforts to notify all members as promptly as possible of the time
7 and place of any emergency meeting and the specific purpose or
8 purposes for which the meeting is called. For an emergency
9 meeting, the 4 members constituting a quorum must include at
10 least one board member representing management and at least one
11 board member representing labor.

12 **Sec. 10. 39-A MRSA §152, sub-§3,** as enacted by PL 1991, c.
13 885, Pt. A, §8 and affected by §§9 to 11, is repealed.

14 **Sec. 11. 39-A MRSA §153-A, sub-§3,** as enacted by PL 1997, c.
15 486, §4, is amended to read:

16 **3. Advocates.** The executive director shall hire advocates
17 under the authority of section ~~152~~ 151, subsection ~~3~~ 1-A, subject
18 to the Civil Service Law, who must be qualified by experience and
19 training.

20 **A.** The minimum qualifications for employment as an advocate
21 must include at least the following:

22 (1) A 6-year combination of appropriate experience,
23 education and training in advocacy or dispute
24 resolution;

25 (2) Knowledge of administrative, adjudicatory or
26 workers' compensation laws, rules and procedures;

27 (3) Knowledge of legal documents, court procedures and
28 rules of evidence; and

29 (4) Knowledge of medical and legal terminology and
30 practices with respect to workers' compensation.

31 **B.** The board shall ensure that advocates receive appropriate
32 and ongoing education and training.

33 **C.** An advocate may not represent before the board any
34 insurer, self-insurer or 3rd-party administrator for a
35 period of 2 years after terminating employment with the
36 board.

37 **Sec. 12. 39-A MRSA §222, sub-§3, ¶B,** as enacted by PL 1991, c.
38 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

2 B. The superintendent shall consult with the ~~chair~~
3 executive director of the board in formulating and adopting
4 these rules.

5 **Sec. 13. 39-A MRSA §320**, as enacted by PL 1991, c. 885, Pt.
6 A, §8 and affected by §§9 to 11, is amended to read:

7 **§320. Review by full board**

8
9
10 Within 5 days ~~of~~ after issuing a decision, a hearing officer
11 may request that the full board review a decision of the hearing
12 officer if the decision involves an issue that is of significance
13 to the operation of the workers' compensation system. There may
14 be no such review of findings of fact made by a hearing officer.

15
16 If a hearing officer asks for review, the time for appeal to
17 the Law Court pursuant to section 322 is stayed and no further
18 action may be taken until a decision of the board has been made.
19 If the board reviews a decision of a hearing officer, any appeal
20 must be from the decision of the board. The time for appeal
21 begins upon the board's issuance of a written decision on the
22 merits of the case or written notice that the board denies review.

23
24 ~~Upon the approval of a majority of the members of the board,~~
25 ~~the request for review may be granted.~~ The board shall vote on
26 whether to review the decision. If a majority of the board's
27 membership fails to vote to grant review or the board fails to
28 act within 60 days after receiving the initial request for
29 review, the decision of the hearing officer stands. If the board
30 votes to review the decision, the board may delegate
31 responsibility for reviewing the decision of the hearing officer
32 under this section to panels of board members consisting of equal
33 numbers of representatives of labor and management. Review must
34 be on the record and on written briefs only. Upon a majority
35 vote of a majority of the board's membership, the board shall
36 issue a written decision affirming, reversing or modifying the
37 hearing officer's decision. The written decision of the board
38 must be filed with the board and mailed to the parties or their
39 counsel. ~~The~~ If the board fails to adopt a decision by majority
40 vote, the decision of the hearing officer stands ~~if the result of~~
41 ~~the voting is less than a majority vote~~ and is subject to direct
42 appellate review in the same manner as if the board had not voted
43 to review the decision.

44
45 **Sec. 14. Transition.** The incumbent Executive Director of the
46 Workers' Compensation Board on the effective date of this Act
47 shall serve until a successor is confirmed and takes office. The
48 terms of the incumbent management representative and the
incumbent labor representative who have served for the longest

2 time on an acting basis conclude immediately upon the effective
date of this Act. The other incumbent management and labor
3 representatives shall remain in office until February 1, 2005,
4 unless replaced sooner by the Governor. No later than August 31,
2004, the employer and labor organizations designated in the
5 Maine Revised Statutes, Title 39-A, section 151, subsection 1
shall each submit lists of no fewer than 12 names to the
6 Governor. From these lists, the Governor shall appoint 3
7 management representatives and 3 labor representatives to serve
8 on the board. The terms of one management and one labor
9 representative expire February 1, 2006. The terms of one
10 management and one labor representative expire February 1, 2007.
11 The terms of one management and one labor representative expire
12 February 1, 2008.
13

14
15 **Emergency clause.** In view of the emergency cited in the
16 preamble, this Act takes effect when approved.
17

18

19

20 SUMMARY

21

22 This bill amends the structure of the Workers' Compensation
Board. The board currently consists of 8 individuals. This bill
23 changes the board's membership to 7 individuals: 3
24 representatives of labor; 3 representatives of management; and
25 the executive director of the board. The executive director is
26 appointed by the Governor subject to confirmation by the
27 Legislature and serves at the pleasure of the Governor. The
28 executive director also serves as chair of the board.
29

30

31 The bill provides procedural language guiding the attendance
32 and votes of the new board. The bill also provides transitional
language.