

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(EMERGENCY)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 1322

H.P. 1019 House of Representatives, March 25, 1983

Referred to the Committee on Labor. Sent up for concurrence and 2,500 ordered printed. Ordered sent forthwith.

EDWIN H. PERT, Clerk

Presented by Speaker Martin of Eagle Lake.
Cosponsors: Senator Pray of Penobscot, Representative Joseph of Water-ville and Representative Diamond of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Reform the Workers'
Compensation System.

Emergency preamble. Whereas, Acts of the Legis-
lature do not become effective until 90 days after
adjournment unless enacted as emergencies; and

Whereas, the Workers' Compensation System in
Maine suffers from structural problems which cause
higher costs to Maine employers and delays in bene-
fits due Maine's injured workers; and

Whereas, these problems should be addressed as
soon as possible; and

Whereas, the implementation of these changes
should be phased in over a period of time; and

1 Whereas, in the judgment of the Legislature,
2 these facts create an emergency within the meaning of
3 the Constitution of Maine and require the following
4 legislation as immediately necessary for the preser-
5 vation of the public peace, health and safety; now,
6 therefore,

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

9 Sec. 1. 5 MRSA §1664, last ¶, as amended by PL
10 1981, c. 444, §1, is further amended to read:

11 Part 3 shall embrace complete drafts or summaries
12 of the budget bills, the legislative measures re-
13 quired to give legal sanction to the financial plan
14 when adopted by the Legislature. These bills shall
15 include General Fund appropriation bills and alloca-
16 tion bills for the following: Highway Fund, Inland
17 Fisheries and Wildlife Fund, Federal Revenue Sharing
18 Fund, Coastal Protection Fund, Maine Nuclear Emer-
19 gency Planning Fund, Workers' Compensation Fund and
20 for the administrative expenses of the Bureau of
21 Alcoholic Beverages and the State Liquor Commission,
22 authorizing expenditures for each fiscal year of the
23 ensuing biennium and such other bills as may be re-
24 quired to provide the income necessary to finance the
25 budget.

26 Sec. 2. 36 MRSA §2511, as amended by PL 1981, c.
27 514, §1, is further amended to read:

28 §2511. Companies taxable; rate

29 Every life insurance company or association,
30 organized under the laws of this State, in lieu of
31 all other taxation, shall be taxed as follows: First,
32 its real estate and personal property shall be taxed
33 by the municipality in which such real estate or per-
34 sonal property is situated, in the same manner as
35 other real estate is taxed therein; 2nd, it shall pay
36 a tax of 1% upon all gross direct premiums written,
37 including annuity considerations, whether in cash or
38 notes absolutely payable, received from residents of
39 this State, first deducting therefrom all return pre-

1 miums and all dividends paid to policyholders in this
2 State on account of ~~said these~~ premiums or considera-
3 tions. Every other insurance company or association
4 organized under the laws of this State, except those
5 mentioned in section 2517, including surety companies
6 and companies engaged in the business of credit
7 insurance or title insurance shall pay a tax of 1%
8 upon all gross direct premiums written whether in
9 cash or in notes absolutely payable on contracts made
10 in the State for fire, casualty and other risks,
11 except workers' compensation, as provided in section
12 2523, less return premiums thereon and less all divi-
13 dends paid to policyholders and less all premiums and
14 assessments on policies of insurance issued on farm
15 property.

16 Every insurance company, association or group
17 self-insurer issuing workers' compensation insurance
18 policies covering the payment of compensation and
19 benefits as provided for in Title 39 shall pay an ad-
20 ditional tax of .05% upon all gross direct premiums
21 written whether in cash or in notes absolutely pay-
22 able on contracts made in the State for workers' com-
23 pensation, less return premiums thereon and less all
24 dividends paid to policyholders. This tax shall be
25 payable only for the calendar year 1982.

26 Every individual self-insurer which self-insures
27 the payment of compensation and benefits as provided
28 for in Title 39 shall pay a tax of .05%, payable only
29 for the calendar year 1982. This tax shall be based
30 on the premium rate which would have been payable for
31 each \$100 of salary.

32 Sec. 3. 36 MRSA §2521-B, as enacted by PL 1981,
33 c. 706, §25, is repealed.

34 Sec. 4. 36 MRSA §2523 is enacted to read:

35 §2523. Taxation of workers' compensation insurers

36 1. Tax on insurance companies. Every insurance
37 company or association organized under the laws of
38 this State, issuing workers' compensation insurance
39 policies covering the payment of compensation and
40 benefits, as provided for in Title 39, shall pay a
41 tax of 1% upon all gross direct premiums written,

1 whether in cash or in notes absolutely payable on
2 contracts made in the State for workers' compensa-
3 tion, less return premiums thereon and less all divi-
4 dends paid to policyholders.

5 Every other insurance company or association which
6 does business or collects premiums or assessments for
7 workers' compensation insurance in this State shall,
8 for the privilege of doing business in this State and
9 in addition to any other taxes imposed for that
10 privilege, pay a tax of 2% upon all gross direct pre-
11 miums written, whether in cash or in notes absolutely
12 payable on contracts written on risks located or res-
13 ident in the State for workers' compensation insur-
14 ance, less return premiums thereon and less all divi-
15 dends paid to policyholders.

16 The tax levied under this section is in lieu of the
17 taxes levied under sections 2511 and 2513, insofar as
18 those taxes are based on workers' compensation insur-
19 ance premiums.

20 2. Returns. Insurance companies and associa-
21 tions shall file a separate return under section
22 2521-A for the tax levied by this section.

23 3. Fund. Taxes collected under this section
24 shall be paid forthwith by the State Tax Assessor to
25 the Treasurer of State with a detailed statement
26 thereof and shall constitute a fund to be known as
27 the "Workers' Compensation Fund." This fund shall be
28 kept as a separate account by the Treasurer of State
29 and he shall pay from the fund, upon vouchers signed
30 by the chairman or director of administrative ser-
31 vices of the Workers' Compensation Commission, the
32 costs and expenses of administering that commission.

33 Any moneys remaining in the Workers' Compensation
34 Fund shall lapse to the General Fund.

35 On request of the chairman of the commission, the
36 Treasurer of State shall establish separate accounts
37 within the fund for different purposes.

38 Sec. 5. 39 MRSA §2, sub-§3, as amended by PL
39 1977, c. 612, §1, is repealed and the following
40 enacted in its place:

1 3. Commission; commissioner. "Commission" means
2 the Workers' Compensation Commission created by
3 section 91. "Commissioner" means any member of the
4 commission, including the chairman, appointed under
5 section 91 to hear and determine cases.

6 Sec. 6. 39 MRSA §2, sub-§3-A is enacted to read:

7 3-A. Compensation payment scheme. "Compensation
8 payment scheme" means the procedure whereby an
9 employer is required to provide compensation or other
10 benefits under this Act to an employee. The term
11 "compensation payment scheme" includes a decree of
12 the commission, payment under the early-pay system
13 provided in section 51-B, and, in case of injuries
14 prior to January 1, 1984, an approved agreement.

15 Sec. 7. 39 MRSA §51-A, as enacted by PL 1979, c.
16 142, §1, is repealed.

17 Sec. 8. 39 MRSA §51-B is enacted to read:

18 §51-B. Early-pay system

19 1. Applicability. The compensation payment
20 scheme created by this section shall apply to all
21 claims arising out of injuries occurring after Decem-
22 ber 31, 1983. Nothing in this section abrogates the
23 rights of a claimant relative to an injury on or
24 before that date.

25 2. Prompt and direct payment. Compensation
26 under this Act shall be paid promptly and directly to
27 the person entitled to that compensation at his mail-
28 ing address, or at any other place he designates,
29 without an award, except where the claim to compensa-
30 tion is controverted by the employer.

31 3. First payment due. The first payment of com-
32 ensation, other than compensation for impairment
33 under section 56 or 56-A, is due within 14 days after
34 the employer has notice or knowledge of the injury or
35 death. On or before the 14th day, all compensation
36 then due shall be paid. Subsequent compensation pay-
37 ments shall be made weekly and in a timely fashion.

1 4. Compensation for impairment. Compensation
2 for impairment under sections 56 and 56-A shall not
3 be payable prior to the date on which the injured
4 employee reaches the stage of maximum medical
5 improvement. It shall become due and payable within
6 14 days after the employer has notice that maximum
7 medical improvement has been attained. For the pur-
8 pose of this subsection, "maximum medical improve-
9 ment" means the date after which further recovery and
10 further restoration of function can no longer be
11 reasonably anticipated, based upon reasonable medical
12 probability.

13 5. Memorandum of payment. Upon making the first
14 payment of compensation or upon making a payment of
15 compensation for impairment, the employer shall
16 immediately forward to the commission a memorandum of
17 payment on forms prescribed by the commission. This
18 information shall include, at a minimum, the follow-
19 ing:

20 A. The names of the employee, employer and
21 insurance carrier;

22 B. The date of the injury;

23 C. The names of the employee's other employers,
24 if any, or a statement that there is no multiple
25 employment, if that is the case; and

26 D. The initial weekly compensation rate.

27 6. Information. Within 30 days after the
28 employer has notice or knowledge of the injury, if
29 the employer is making compensation payments under
30 this section, the employer shall file with the com-
31 mission a statement of the employee's average weekly
32 wage before the injury, together with a wage state-
33 ment or wage statements in the case of multiple
34 employment. A copy of this information shall be
35 mailed to the person receiving payments.

36 7. Notice of controversy. If the employer,
37 prior to making payments under subsection 3, contro-
38 verts the claim to compensation, he shall file with
39 the commission, within 14 days after the employer has
40 notice or knowledge of the injury or death, a notice

1 of controversy in a form prescribed by the commis-
2 sion. The notice shall indicate the name of the
3 claimant, name of the employer, date of the alleged
4 injury or death and the grounds upon which the claim
5 to compensation is controverted. The employer shall
6 promptly furnish the employee with a copy of the
7 notice.

8 If at the end of the 14-day period, the employer has
9 not filed the notice required by this subsection, he
10 shall begin payments as required under subsection 3.
11 He may cease payments and file with the commission a
12 notice of controversy as provided in this subsection
13 no later than 44 days after the employer has notice
14 or knowledge of the injury or death. Failure to file
15 the required notice of controversy prior to the
16 expiration of the 44-day period constitutes accep-
17 tance by the employer of the compensability of the
18 injury or death.

19 If at the end of the 44-day period the employer has
20 not filed a notice of controversy, or if pursuant to
21 a proceeding before the commission the employer is
22 required to make payments, the payments may not be
23 decreased or suspended, except as provided in section
24 100.

25 8. Effect of payment. If, within the 44-day
26 period established in subsection 7 and after the pay-
27 ment of compensation without an award, the employer
28 elects to controvert the claim to compensation, the
29 payment of compensation shall not be considered to be
30 an acceptance of the claim or an admission of liabil-
31 ity. The acceptance of compensation by the injured
32 employee or his dependents shall not be considered an
33 admission as to the nature and scope of the employ-
34 er's liability or a waiver of the right to question
35 the amount of compensation.

36 9. Commission to take action upon notice of con-
37 troversy. Upon receipt of information from any
38 person claiming compensation, or from the employer,
39 that the claim to compensation is controverted, or
40 that payment of compensation has been suspended or
41 reduced, the commission shall, whether or not a peti-
42 tion for award has been filed, promptly take any ac-
43 tion it considers necessary to protect the rights of

1 all parties, including, without limitation, investi-
2 gating the circumstances surrounding the claim, re-
3 quiring medical examinations, holding hearings, and
4 making determinations and awards. Notwithstanding
5 the absence of a dispute between the parties, in any
6 case in which payments are being made without an
7 award, the commission may, upon its own initiative,
8 or upon the petition of a party, and at any time,
9 take any of the actions described in this subsection.

10 10. Penalty for nonpayment. If a claim to com-
11 ensation has not been controverted and any payment
12 of compensation payable without an award is not paid
13 within 7 days after it becomes due, the commission
14 shall assess a penalty equal to 10% of the amount
15 due. If a claim of compensation has been contro-
16 verted and a notice of controversy is not filed
17 within the time prescribed within subsection 7, the
18 commission shall assess a penalty of \$25 for each day
19 of noncompliance.

20 The penalties provided in this subsection shall be
21 assessed against the insurer or self-insurer, which-
22 ever the case may be. The penalties shall be paid to
23 the Second Injury Fund created by section 57. No
24 penalty under this subsection may be assessed where
25 it is shown to the commission that the delay in pay-
26 ment or filing resulted from conditions over which
27 the insurer or self-insurer has no control if the
28 insurer or self-insurer proves that it acted in good
29 faith and with reasonable diligence.

30 11. Subsequent periods of disability. In case
31 of subsequent periods of disability, the date from
32 which the times for payment or controversy shall be
33 computed is the date the employer has notice or
34 knowledge of the disability.

35 Sec. 9. 39 MRSA §54, first ¶, as amended by PL
36 1981, c. 483, §1, is further amended to read:

37 While the incapacity for work resulting from the
38 injury is total, the employer shall pay the injured
39 employee a weekly compensation equal to 2/3 his aver-
40 age gross weekly wages, earnings or salary, but not
41 more than 166 2/3% of the average weekly wage in the
42 State as computed by the Employment Security Commis-

1 sion; nor less than \$25 weekly; and such weekly com-
2 pensation shall be adjusted annually ~~on July 1st~~ so
3 that it continues to bear the same percentage rela-
4 tionship to the average weekly wage in the State as
5 computed by the Employment Security Commission, as it
6 did at the time of the injury. In the following cases
7 it shall, for the purposes of this Act, be conclu-
8 sively presumed that the injury resulted in permanent
9 total incapacity; the total and irrevocable loss of
10 sight of both eyes, the loss of both hands at or
11 above the wrist, the loss of both feet at or above
12 the ankle, the loss of one hand and one foot, an
13 injury to the spine resulting in permanent and com-
14 plete paralysis of the arms or legs or an injury to
15 the skull resulting in incurable imbecility or insani-
16 ty. In the event of such permanent total incapacity,
17 the employer shall pay the employee a weekly compen-
18 sation equal to 2/3 his average gross weekly wage,
19 earnings or salary, but not more than 166 2/3% of the
20 average weekly wage in the State as computed by the
21 Employment Security Commission; nor less than \$25
22 weekly; and such weekly compensation shall be adjust-
23 ed annually ~~on July 1st~~ so that it continues to bear
24 the same percentage relationship to the average
25 weekly wage in the State as computed by the Employ-
26 ment Security Commission, as it did at the time of
27 the injury. If the totally incapacitated employee
28 dies, as a result of this injury, leaving dependents
29 who were dependent upon his earnings at the time of
30 his injury, then payments shall be made to the
31 dependents in accordance with the procedures estab-
32 lished by section 58. The annual adjustments re-
33 quired by this section shall be made on the anniver-
34 sary date of the injury, except that, where the
35 injury occurred prior to July 1, 1983, or where the
36 effect of the 166 2/3% maximum is to reduce the
37 amount of compensation to which the claimant would
38 otherwise be entitled, the adjustment shall be made
39 annually on July 1st.

40 Sec. 10. 39 MRSA §55, as amended by PL 1981, c.
41 483, §2, is further amended to read:

42 §55. Compensation for partial incapacity

43 While the incapacity for work resulting from the
44 injury is partial, the employer shall pay the injured

1 employee a weekly compensation equal to 2/3 the dif-
2 ference, due to the injury, between his average gross
3 weekly wages, earnings or salary before the injury
4 and the weekly wages, earnings or salary which he is
5 able to earn thereafter, but not more than 166 2/3%
6 of the average weekly wage in the State as computed
7 by the Employment Security Commission; and such
8 weekly compensation shall be adjusted annually ~~on~~
9 ~~July 1st~~ so that it continues to bear the same per-
10 centage relationship to the average weekly wage in
11 the State as computed by the Employment Security Com-
12 mission, as it did at the time of the injury. The
13 annual adjustment required by this section shall be
14 made on the anniversary date of the injury, except
15 that, where the injury occurred prior to July 1,
16 1983, or where the effect of the 166 2/3% maximum is
17 to reduce the amount of compensation to which the
18 claimant would otherwise be entitled, the adjustment
19 shall be made annually on July 1st.

20 Sec. 11. 39 MRSA §58, first ¶, as amended by PL
21 1981, c. 483, §3, if further amended to read:

22 If death results from the injury, the employer
23 shall pay the dependents of the employee, dependent
24 upon his earnings for support at the time of his
25 injury, a weekly payment equal to 2/3 his average
26 gross weekly wages, earnings or salary, but not more
27 than 166 2/3% of the average weekly wage in the State
28 as computed by the Employment Security Commission;
29 nor less than \$25 weekly; from the date of death,
30 until such time as provided for in the following
31 paragraph. Such weekly compensation shall be adjusted
32 annually ~~on July 1st~~ so that it continues to bear the
33 same percentage relationship to the average weekly
34 wage in the State as computed by the Employment
35 Security Commission, as it did at the time of the
36 injury. The annual adjustment required by this
37 section shall be made on the anniversary date of the
38 injury, except that, where the injury occurred prior
39 to July 1, 1983, or where the effect of the 166 2/3%
40 maximum is to reduce the amount of compensation to
41 which the dependents would otherwise be entitled, the
42 adjustment shall be made annually on July 1st.

43 Sec. 12. 39 MRSA §68, 2nd ¶, as repealed and
44 replaced by PL 1969, c. 84, is amended to read:

1 If the injured employee elects to claim compensa-
2 tion and benefits under this Act, any employer having
3 paid such compensation or benefits or having become
4 liable therefor under any ~~deeree or approved agree-~~
5 ~~ment compensation payment scheme~~ shall have a lien
6 for the value of compensation paid on any damages
7 subsequently recovered against the third person lia-
8 ble for the injury. If the employee or compensation
9 beneficiary fails to pursue his remedy against the
10 third party within 30 days after written demand by an
11 employer or compensation insurer in interest, the
12 employer or compensation insurer shall be subrogated
13 to the rights of the injured employee and shall be
14 entitled to enforce liability in their own name or in
15 the name of the injured party; the accounting for the
16 proceeds to be made on the basis provided.

17 Sec. 13. 39 MRSA §69 is amended to read:

18 §69. Preference of claims

19 A claim for compensation under this Act, and any
20 ~~deeree or approved agreement compensation payment~~
21 ~~scheme~~ therefor, shall be entitled to a preference
22 over the unsecured debts of the employer to the same
23 amount as the wages of labor are preferred by the
24 laws of this State. Nothing herein shall be construed
25 as impairing any lien which the employee may have ac-
26 quired.

27 Sec. 14. 39 MRSA §71, 2nd ¶ is amended to read:

28 Upon payment of any lump sum approved by the com-
29 mission, the employer shall be discharged from all
30 further liability on account of ~~said the~~ injury or
31 death and be entitled to a duly executed release;
32 upon filing which, or other due proof of payment, the
33 liability of such employer under ~~any agreement, award~~
34 ~~or deeree~~ this Act shall be discharged of record, and
35 the employee accepting the lump sum settlement shall
36 receive no further compensation or other benefits on
37 account of ~~said the~~ injury or death under this Act.

38 Sec. 15. 39 MRSA §91, as amended by PL 1981, c.
39 698, §192, is repealed and the following enacted in
40 its place:

1 §91. Workers' Compensation Commission

2 1. Membership; term. The Workers' Compensation
3 Commission, as established in this section, shall
4 consist of 9 members, who shall be persons learned in
5 the law and members of good standing of the bar of
6 this State. They shall be appointed by the Governor,
7 subject to review by the joint standing committee of
8 the Legislature having jurisdiction over judiciary
9 and to confirmation by the Legislature. One of the
10 commissioners, to be designated by the Governor as
11 chairman, shall be appointed for the term of 5 years
12 and the other commissioners for a term of 4 years
13 each.

14 2. Vacancies; removal. Commissioners shall hold
15 office for the terms provided in subsection 1, unless
16 removed, and until their successors are appointed and
17 qualified. They shall be sworn, and for ineffi-
18 ciency, willful neglect of duty or for malfeasance in
19 office may be removed by the Governor or by impeach-
20 ment. Before removing a commissioner, the Governor
21 shall notify the President of the Senate and the
22 Speaker of the House of Representatives of the
23 removal, and the reasons for the removal. In case of
24 a vacancy occurring through death, resignation or
25 removal, the Governor shall appoint a successor for
26 the whole term of the member whose place he takes,
27 subject to removal. In case the office of chairman
28 becomes vacant, the senior appointed commissioner
29 shall act as chairman until the Governor makes an
30 appointment to fill the vacancy.

31 3. Salary; expenses. Salaries of commissioners
32 are as provided in Title 2, section 7, subsection 2.
33 Members of the commission shall receive their actual,
34 necessary, cash expenses while away from their offi-
35 ces on official business of the commission. Title 4,
36 section 103, providing for compensation upon retire-
37 ment of Justices of the Superior Court and to bene-
38 fits for their spouses and surviving minor children,
39 is made applicable to workers' compensation commis-
40 sioners, except that the state's contribution shall
41 be taken from the Workers' Compensation Fund. Prior
42 service by full-time commissioners holding office on
43 July 1, 1983, shall be included for purposes of this
44 section. Service on any court of this State and ser-

1 vice on the commission shall all be credited to the
2 retiree.

3 4. Practice. Each commissioner and chairman
4 shall devote full time to the duties of his office
5 and shall not hold any other public office or public
6 employment. He shall not practice law during his
7 term of office, nor shall he during that term be the
8 partner or associate of any person in the practice of
9 law.

10 5. Headquarters; regional offices. The commis-
11 sion shall have its central office in Augusta, and 4
12 district offices to be located in Androscoggin,
13 Aroostook, Cumberland and Penobscot Counties. The
14 commission may hold sessions at any place within the
15 State.

16 6. Seal. The commission shall have a seal bear-
17 ing the words "Workers' Compensation Commission of
18 Maine."

19 Sec. 16. 39 MRSA §91-A, as enacted by PL 1979,
20 c. 548, §5, is repealed.

21 Sec. 17. 39 MRSA §92, as amended by PL 1979, c.
22 548, §6, is repealed and the following enacted in its
23 place:

24 §92. Authority of chairman; administration

25 1. Rules. The chairman of the commission shall
26 have general supervision over the administration of
27 this Act, and responsibility for the efficient and
28 effective management of the commission and its
29 employees. Subject to any applicable requirements of
30 the Maine Administrative Procedure Act, Title 5,
31 chapter 375, the chairman shall make rules, prescribe
32 forms and make suitable orders as to procedure
33 adopted to assure a speedy, efficient and inexpensive
34 disposition of all proceedings.

35 2. Employees. The chairman shall appoint,
36 supervise and direct, subject to the Personnel Law, a
37 director of administrative services, full-time or
38 part-time reporters, and such legal and clerical
39 assistance as may be necessary.

1 3. Data system; reports. The chairman is
2 responsible for development and administration of the
3 commission data system. The chairman shall report
4 quarterly to the Governor, the President of the
5 Senate and the Speaker of the House of Representa-
6 tives on each commissioner's caseload and progress,
7 and the number of instances in which each commis-
8 sioner has exceeded the 30-day rule contained in
9 section 99-B.

10 4. Booklets; information. In order to ensure
11 that both employers and employees are fully informed
12 as to their rights and responsibilities under this
13 Act, the chairman shall prepare, publish and distrib-
14 ute an illustrated booklet explaining, in informal
15 and readily understandable language, those rights and
16 responsibilities. The chairman shall be responsible
17 for periodic revision of the booklet.

18 5. Active retired commissioners. Any commis-
19 sioner having retired from the commission is eligible
20 for appointment as an active retired commissioner.
21 The Governor, subject to review by the joint standing
22 committee of the Legislature having jurisdiction over
23 judiciary and to confirmation by the Legislature,
24 may, upon being notified of the retirement of a com-
25 missioner, appoint that commissioner to be an active
26 retired commissioner for a term of 4 years, unless
27 sooner removed, and subject to reappointment. An ac-
28 tive retired commissioner shall have the same powers
29 as before retirement, except that he shall act only
30 in those cases and at times and places as directed by
31 the chairman, and except that an active retired com-
32 missioner may not be a member of a panel of the
33 appellate division.

34 An active retired commissioner who performs the ser-
35 vices of a commissioner at the direction and assign-
36 ment of the chairman shall be compensated at a rate
37 established by the chairman, provided that the total
38 per diem compensation and retirement pension received
39 by an active retired commissioner may not exceed the
40 annual salary of a regular commissioner. In addi-
41 tion, the active retired commissioner shall receive
42 reimbursement for his expenses actually and reason-
43 ably incurred in the performance of his duties.

1 6. Office of Employee Assistants. The chairman
2 shall provide adequate funding for an Office of
3 Employee Assistants and shall, subject to the Person-
4 nel Law, appoint the assistants to staff the Augusta
5 office and district offices. Assistants are not
6 attorneys, but should demonstrate a level of exper-
7 tise roughly equivalent to that of insurance claims'
8 analysts. The purpose of employee assistants is to
9 provide advice and assistance to employees under this
10 Act, and particularly to assist employees in informal
11 conferences under section 94-B.

12 No employee of the Office of Employee Assistants may
13 represent before the commission any insurer, self-
14 insurer, group self-insurer, adjusting company or
15 self-insurance company for a period of 2 years after
16 terminating employment with the office.

17 7. Budget. The chairman shall administer the
18 Workers' Compensation Fund established by Title 36,
19 section 2523, subsection 3. The allocation bill, re-
20 quired by Title 5, section 1664, shall be reviewed by
21 the joint standing committee of the Legislature hav-
22 ing jurisdiction over appropriations and financial
23 affairs.

24 Sec. 18. 39 MRSA §93, sub-§6 is enacted to read:

25 6. Case administration. The commission shall
26 assume an active and forceful role in the administra-
27 tion of this Act to ensure that the system operates
28 efficiently and with maximum benefit to both employ-
29 ers and employees. It shall continually monitor
30 individual compensation cases to ensure that injured
31 employees or their dependents receive the full amount
32 of compensation to which they are entitled under this
33 Act.

34 Sec. 19. 39 MRSA §94, first ¶, as amended by PL
35 1977, c. 709, §3, is repealed and the following
36 enacted in its place:

37 Subject to section 94-B, in the event of a con-
38 troversy as to the responsibility of an employer for
39 the payment of compensation, any party in interest
40 may file in the office of the commission a petition
41 for award of compensation, setting forth the names

1 and residences of the parties, the facts relating to
2 the employment at the time of the injury, the knowl-
3 edge of the employer or notice of the occurrence
4 thereof, the character and extent of the injury and
5 the claims of the petitioner with reference thereto,
6 together with such other facts as may be necessary
7 and proper for the determination of the rights of the
8 petitioner.

9 Sec. 20. 39 MRSA §§94-A and 94-B are enacted to
10 read:

11 §94-A. Commission actions

12 In addition to other actions required of or per-
13 mitted to the commission under this Act, in order to
14 assure just and efficient administration of claims,
15 the commission shall perform the actions required by
16 this section.

17 1. Inform employee. Immediately upon receipt of
18 the employer's notice of injury required by section
19 106, the commission shall contact the employee and
20 provide information explaining the compensation sys-
21 tem and the employee's rights. The commission shall
22 advise the employee how to contact the commission for
23 further assistance and shall provide that assistance.

24 2. Monitor payments. The commission shall moni-
25 tor cases in order to assure that:

26 A. Either payments are initiated or notice of
27 controversy is filed by the end of 14 days from
28 the employer's notice or knowledge of the injury;
29 and

30 B. Payments to the claimant provide the full
31 amount of compensation to which he is entitled,
32 and are properly indicated on the memorandum of
33 payment.

34 3. Liberal construction. In interpreting this
35 Act, the commission shall construe it liberally and
36 with a view to carrying out its general purpose. The
37 rule that statutes in derogation of the common law
38 are to be strictly construed shall have no applica-
39 tion to this Act.

1 4. Information. The commission may require the
2 employee, employer or insurer to provide it with any
3 information it reasonably deems necessary to monitor
4 cases, including, but not limited to, pre-injury and
5 post-injury wage statements.

6 §94-B. Procedure upon notice of controversy; infor-
7 mal conference

8 1. Conference scheduled; waiver. Upon filing of
9 a notice of controversy, and instead of proceeding by
10 way of a petition, the matter shall be referred to a
11 commissioner, who shall schedule an informal confer-
12 ence to be held no later than 3 weeks from the date
13 of that filing. The provisions of section 98 with
14 regard to place and transportation costs apply
15 equally to informal conferences.

16 Upon agreement of the parties, an informal conference
17 may be waived and a formal hearing scheduled.

18 2. Conference procedure. The commissioner shall
19 make every effort to resolve any controversies or
20 misunderstandings and shall render an advisory opin-
21 ion at the conference. The commissioner is not bound
22 by the ordinary common law or statutory rules of evi-
23 dence or procedure, but shall make inquiry in such
24 manner as is best calculated to ascertain the sub-
25 stantial rights of the parties and carry out the
26 spirit of this Act.

27 3. Representation. In preparation for and at
28 the conference, the commission shall assure that com-
29 petent technical staff from the Office of Employee
30 Assistants is available to provide advice and assis-
31 tance to the employee.

32 If at this stage the employer or insurer elects to be
33 represented by legal counsel, the employee is enti-
34 tled to be similarly represented by legal counsel of
35 his choice, with all reasonable attorney fees to be
36 assessed against the employer. If no adverse party
37 elects to be so represented, the employee retains the
38 right to secure legal counsel at his own expense.

39 4. Action upon opinion. Within 7 days of the
40 conference, the employer may file with the commission

1 a memorandum of payment evidencing the initiation of
2 compensation payments or, if there is further contro-
3 versy, any party may then file a petition as provided
4 in this Act.

5 Sec. 21. 39 MRSA §97, 2nd ¶, as enacted by PL
6 1971, c. 388, is amended to read:

7 Except that, for good cause shown, a single com-
8 missioner may permit the late filing of any pleading
9 permissible under this Act. If the subject of the
10 petition has been considered in an informal confer-
11 ence under section 94-B, the period for filing and
12 mailing of answers shall be 7 days.

13 Sec. 22. 39 MRSA §98, as amended by PL 1977, c.
14 613, §1, is repealed and the following enacted in its
15 place:

16 §98. Time and place of formal hearing

17 Upon filing of a petition, the matter shall be
18 referred to a single commissioner or, in a case under
19 section 94-B, to the same commissioner, who shall fix
20 a time for hearing upon at least a 5-day notice given
21 to all the parties or to the attorney of record of
22 each party. The matter need not be assigned to the
23 same commissioner if that commissioner is unavailable
24 due to illness, death or similar reason. The commis-
25 sioner may not be replaced for reason of caseload or
26 because he presided at the informal conference. All
27 hearings shall be held at such towns and cities
28 geographically distributed throughout the State as
29 the commission shall designate. In case the place of
30 hearing so designated is more than 10 miles distant
31 from the place where the injury occurred, the
32 employer shall provide transportation or reimburse
33 the employee for reasonable mileage in traveling
34 within the State to and from the hearing. The amount
35 allowed for travel shall be determined by the commis-
36 sioner or commission and awarded separately in the
37 decree. If the case has had an informal conference
38 under section 94-B, the hearing shall be held within
39 30 days of the filing of the petition.

40 Sec. 23. 39 MRSA §99-B, as enacted by PL 1979,
41 c. 490, §2, is amended to read:

1 §99-B. Prompt decision required

2 The commissioner who hears a case pursuant to
3 section 99 shall render his decision no later than 30
4 days after each party has completed presenting its
5 case. Whenever the commissioner exceeds the limit
6 contained in this section, compensation to him shall
7 be forfeited effective the day after the 30th day and
8 for each day until the decision has been issued; pro-
9 vided that this provision shall not apply in any case
10 for which the commissioner has shown just cause, as
11 determined by the committee on judicial responsibil-
12 ity and disability established pursuant to Title 4,
13 section 9-B, rules of the commission made pursuant to
14 section 92, subsection 1, for delay beyond 30 days.

15 Sec. 24. 39 MRSA §99-C, as enacted by PL 1981,
16 c. 185, is amended to read:

17 §99-C. Petition for reopening

18 Upon the petition of either party, a single com-
19 missioner may reopen and review any approved agree-
20 ment compensation payment scheme, award or decree
21 upon the grounds of newly discovered evidence which
22 by due diligence could not have been discovered prior
23 to the time the agreement was approved payment scheme
24 was initiated or prior to the hearing on which the
25 award or decree was based. The petition must be filed
26 within 30 days of the agreement payment scheme, award
27 or decree.

28 Sec. 25. 39 MRSA §100, sub-§4, ¶A, as enacted by
29 PL 1981, c. 514, §4, is repealed and the following
30 enacted in its place:

31 A. The employer and the employee file an agree-
32 ment with the commission; or

33 Sec. 26. 39 MRSA §100-A, as amended by PL 1977,
34 c. 696, §407, is further amended to read:

35 §100-A. Orders or agreements for trial work periods

36 The Workers' Compensation Commission commission
37 may approve an agreement of the parties to a trial
38 work period at a specified job for a period not to

1 exceed 3 months. During ~~such~~ this trial work period
2 and the payment of wages therefor, the payment of
3 compensation under ~~decrees or approved agreements~~ a
4 compensation payment scheme shall be suspended. ~~Such~~
5 That suspension shall cease and weekly compensation
6 shall be restored in the amount being paid prior to
7 the commencement of the trial work period immediately
8 upon the filing of a petition by the employee stating
9 that he has attempted a trial work period and was
10 unable to adequately perform during the same period.

11 Sec. 27. 39 MRSA §101, as amended by PL 1977, c.
12 709, §4, is repealed.

13 Sec. 28. 39 MRSA §104-A, sub-§1, as amended by
14 PL 1981, c. 698, §§200 and 201, is further amended to
15 read:

16 1. Order or decision. ~~Within~~ With regard to
17 injuries occurring prior to January 1, 1984, within
18 10 days after the receipt of notice of an approved
19 agreement for payment of compensation, or with regard
20 to injuries occurring after December 31, 1983, within
21 the time limits specified in section 51-B, or within
22 10 days after any order or decision of the commission
23 awarding compensation. Payment shall not be suspended
24 thereafter in the event of appeal to the Appellate
25 Division as provided in section 103-B or, if the
26 division finds that the employee is entitled to com-
27 ensation, in the event of appeal to the Law Court
28 from a decision of the division as provided in
29 section 103-C, except that the commission shall
30 retain jurisdiction, pending the decision on appeal,
31 to enter orders or decisions as provided in section
32 100. If the commission, after a review of incapacity
33 under section 100, issues an order or decision deny-
34 ing compensation to an employee, compensation shall
35 be suspended from the date of the commission's order
36 or decision, notwithstanding any appeal of that order
37 or decision to the division as provided in section
38 103-B, or any report or appeal to the Law Court as
39 provided in sections 103-C and 103-D. The employer or
40 insurer may recover from an employee payments made
41 pending appeal to the Appellate Division or pending
42 report or appeal to the Law Court if and to the
43 extent that the Appellate Division or the Law Court
44 has decided that the employee was not entitled to the

1 compensation paid. The commission shall have full
2 jurisdiction to determine the amount of overpayment,
3 if any, and the amount and schedule of repayment, if
4 any. The commission, in determining whether or not
5 repayment should be made and the extent and schedule
6 of repayment, shall consider the financial situation
7 of the employee and his family and shall not order
8 repayment which would work hardship or injustice.

9 Sec. 29. 39 MRSA §104-A, sub-§2, as amended by
10 PL 1981, c. 291, §2, is further amended to read:

11 2. Failure. ~~In~~ Except as otherwise provided by
12 section 51-B, subsection 9, in the event of failure
13 by the employer or insurance carrier to pay compensa-
14 tion as provided in this section a forfeiture not to
15 exceed \$25 for each day of noncompliance shall be
16 assessed against the employer or the insurance car-
17 rier.

18 If any employer, who is required to secure the pay-
19 ment to his employees of the compensation provided
20 for by this Act, fails to do so, he shall be guilty
21 of a Class D crime. Failure of any employer, after
22 imposition of the foregoing penalty, to secure the
23 payment of compensation under this Act after notice
24 by the commission to that employer to do so shall, as
25 to each such notice, be deemed a further violation in
26 respect thereof and the same punishment shall be
27 imposed. If that employer is a corporation, the
28 president or treasurer, or both, shall be liable for
29 that punishment.

30 Sec. 30. 39 MRSA §106-A, as amended by PL 1979,
31 c. 541, Pt. A, §283, is further amended to read:

32 §106-A. Notice by the commission

33 Within 90 15 days of receipt of an employer's
34 notice of injury, as required by section 106, unless
35 it has received a petition for award ~~or approved an~~
36 ~~agreement for~~ of compensation relating to the injured
37 employee, the commission shall take reasonable steps
38 to notify the employee that unless the employer dis-
39 putes the claim, the employer is required to pay com-
40 ensation within 14 days after notice of the injury;
41 that a petition for award may be filed; section 110

1 of the Act provides for the payment of attorney's
2 fees under certain circumstances; and rights under
3 the Act may not be protected unless a petition of
4 award or approved agreement memorandum of payment is
5 on file with the commission within 2 years of the
6 injury.

7 **Sec. 31.** 39 MRSA §110, as amended by PL 1979, c.
8 132, §2, is further amended to read:

9 When the commission or commissioner finds that an
10 employee has instituted proceedings under this chap-
11 ter on reasonable grounds and in good faith or that
12 the employer through or under his insurance carrier
13 has instituted proceedings under this chapter, the
14 ~~said~~ commission or commissioner may assess the
15 employer costs of witness fees and a reasonable
16 attorney's fee, when in the commission's or commis-
17 sioner's ~~judgement~~ judgment the ~~said~~ witnesses and
18 the services of the ~~said~~ attorney were necessary to
19 the proper and expeditious disposition of the case.
20 The employer may not be assessed costs of an attor-
21 ney's fee attributable to services rendered prior to
22 one week after the informal conference under section
23 94-B or, if the informal conference is waived, ser-
24 vices rendered prior to the date of that waiver,
25 unless a party adverse to the employee was so repre-
26 sentated at that stage.

27 No attorney representing an employee in a pro-
28 ceeding under this ~~Title shall~~ Act may receive any
29 fee from that client for an appearance before the
30 commission, including preparation for that appear-
31 ance, except as provided in section 94-B, subsection
32 3. Any attorney who violates this paragraph shall
33 lose his fee and shall be liable in a court suit to
34 pay damages to the client equal to 2 times the fee
35 charged for that client.

36 Notwithstanding any other provision of this
37 section, the employer may be assessed a reasonable
38 attorney's fee for services rendered to the employee
39 in executing an agreement under section 100, subsec-
40 tion 4, paragraph A.

41 **Sec. 32. Study commission.** There is established
42 a special commission to review and make recommenda-

1 tions to the Governor and the Legislature concerning
2 workers' compensation alternative systems. The com-
3 mission shall evaluate the impact of reserving prac-
4 tices, return on investments and profitability on
5 workers' compensation ratemaking and structural
6 alternatives, such as state funds.

7 The commission shall be composed of 3 persons,
8 appointed by the Governor: A chairman without any
9 ties to an interest group, a representative of busi-
10 ness and a representative of labor. Advisory, non-
11 voting representation from the insurance industry and
12 the Department of Business Regulation may be pro-
13 vided. For purposes of this study, the commission
14 shall have the same powers as those provided to the
15 Superintendent of Insurance under Title 24-A, chapter
16 3, to garner information from insurers and individual
17 and group self-insurers.

18 The commission may employ an actuary and such
19 other staff as may be required. The 3 commission
20 members shall be entitled to receive \$150 per day,
21 plus expenses for each day actually spent conducting
22 business of the commission.

23 The commission shall report its full findings to
24 the Governor, the President of the Senate and the
25 Speaker of the House of Representatives, together
26 with any recommended legislation, no later than April
27 30, 1984.

28 **Sec. 33. Appropriation.** The following funds are
29 appropriated from the General Fund to carry out the
30 study provided in section 32.

31		<u>1983-84</u>
32	COMMISSION TO STUDY	
33	WORKERS' COMPENSATION INSURANCE	
34	Personal services	\$30,000
35	All Other	<u>70,000</u>
36	Total	\$100,000

37 **Emergency clause.** In view of the emergency cited
38 in the preamble, sections 3, 5, 6, 9 to 14, 23, 25,

1 32 and 33 of this Act shall take effect when
2 approved. Sections 1, 2, 4 and 15 to 17 shall take
3 effect on July 1, 1983. The remaining sections shall
4 take effect on January 1, 1984.

5 Fiscal Note

6 Based on fiscal year 1981 information on premiums
7 written in workers' compensation, approximately
8 \$2,260,000 is collected annually in premium taxes for
9 workers' compensation risks underwritten by foreign
10 and domestic insurance companies. This money pres-
11 ently goes into the General Fund. Under section 4,
12 these taxes would go into a lapsing "Workers' Compensa-
13 tion Fund."

14 The Governor's budget currently calls for General
15 Fund appropriations of approximately \$1,220,000, to
16 the Workers' Compensation Commission. Cost estimates
17 of implementing the reforms in this bill call for
18 approximately \$500,000, in increased annual expendi-
19 tures. In addition, the Speaker's Select Committee
20 on Workers' Compensation is expected to make further
21 recommendations concerning rehabilitation and the
22 Second Injury Fund which will demand additional
23 resources.

24 Assuming full utilization of the premium tax
25 moneys diverted to the Workers' Compensation Fund,
26 then, the net loss to the General Fund would be
27 anticipated at about \$1 million. Due to the lapsing
28 nature of this account, actual lost revenues might
29 fall below that figure in a given year.

30 STATEMENT OF FACT

31 This bill contains recommendations of the
32 Speaker's Select Committee on Workers' Compensation,
33 as contained in its report of January 17, 1983.

34 The first recommendation incorporated in this
35 measure is the institution of an "early-pay" system
36 of compensation to replace the current "agreement"
37 system. While the principal provision on this sub-
38 ject is contained in section 8 of the bill, many of

1 the proposal's other sections simply alter other
2 parts of the Workers' Compensation Act to conform to
3 this change.

4 The particular form of early-pay instituted here
5 incorporates a number of safeguards for injured work-
6 ers, while seeking to address several cost issues,
7 including delays which inhibit rehabilitation and
8 return to work, excessive attorney involvement and
9 litigation. An informal conference procedure, where
10 unnecessary attorney intrusion would be discouraged,
11 is included.

12 The select committee's 2nd area of recommenda-
13 tions was administrative improvements. The bill fol-
14 lows those recommendations by providing necessary
15 funds from the insurance premium tax, creation of
16 regional offices of the commission, replacement of
17 the 2 ex officio commissioners by permanent full-time
18 commissioners, additional staff, greater administra-
19 tive authority and responsibility to the chairman,
20 and extension of the judicial retirement system to
21 commissioners. The commission would also be author-
22 ized to provide informative publications to employers
23 and employees.

24 Another cost-saving recommendation of the select
25 committee was to provide that annual cost-of-living
26 adjustments be made on the anniversary date of the
27 injury, rather than on the arbitrary July 1st date in
28 current law. An exception would be made in those
29 cases where the effect of the 166 2/3% benefit cap
30 results in a reduction of benefits which would other-
31 wise be payable. These provisions are contained in
32 sections 9 to 11.

33 Finally, based on the 5th recommendation of the
34 committee, the bill calls for a funded study of
35 alternative systems in the insurance area.

36 The emergency clause provides for delayed imple-
37 mentation of the early-pay system, to be started at
38 the beginning of the next calendar year. Other
39 provisions, such as administrative and financing
40 changes, would be enacted sooner, in order to allow
41 for relief from current case backlogs and to assist
42 in the transition to the new system.

1 A feature of this measure considered essential in
2 the select committee's report was the dedication of
3 premium tax assessments to a Workers' Compensation
4 Fund. As indicated in the fiscal note, current
5 appropriations from the General Fund to the Workers'
6 Compensation Commission run at about \$1 million below
7 the contribution of the premium tax to the General
8 Fund. The implementation of these and other forth-
9 coming recommendations will demand a greater share of
10 these revenues. In particular, the report states
11 that "a rehabilitation program that was successful in
12 placing employees in productive employment would
13 represent one of the more significant opportunities
14 to reduce costs." The commitment of state funds
15 derived from taxation of workers' compensation insur-
16 ance premiums provided by this bill will enable the
17 comprehensive reforms contemplated both by this bill
18 and the forthcoming recommendations.

19

1077031283