

# MAINE STATE LEGISLATURE

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(EMERGENCY)

FIRST REGULAR SESSION

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ONE HUNDRED AND ELEVENTH LEGISLATURE

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Legislative Document

No. 1427

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H.P. 1081

House of Representatives, April 6, 1983

Referred to the Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Andrews of Portland.

Cosponsors: Senator Bustin of Kennebec, Representative Carroll of Gray and Representative Melendy of Rockland.

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STATE OF MAINE

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

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AN ACT to Insure Fairness in the  
Administration of the United States Social  
Security Act by the State Disability  
Determination Services.

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

Whereas, hundreds of disabled people from throughout the State have had disability benefits under the United States Social Security Act denied them, only to have the benefits reinstated after appeal; and

Whereas, this has caused suffering and hardship to these people; and

Whereas, Maine's Disability Determination Services within the Department of Human Services admin-

1 isters the program of disability investigations for  
2 the United States Social Security Administration; and

3 Whereas, the standards and procedures used by the  
4 Disability Determination Services are different from  
5 those used by administrative law judges in reviewing  
6 cases and this discrepancy plays a role in the high  
7 reversal rate of Disability Determination Services  
8 decisions when appealed to administrative law judges;  
9 and

10 Whereas, other problems have been identified with  
11 the methods used by the Disability Determination Ser-  
12 vices in making its decisions, including the adequacy  
13 of staffing and staff training, the adequacy of con-  
14 sultative examinations arranged by the Disability  
15 Determination Services, and the adequacy of staff  
16 medical personnel and medical records; and

17 Whereas, in the judgment of the Legislature,  
18 these facts create an emergency within the meaning of  
19 the Constitution of Maine and require the following  
20 legislation as immediately necessary for the preser-  
21 vation of the public peace, health and safety; now,  
22 therefore,

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

25 **Sec. 1. Study commission.**

26 1. Commission established. There is created a  
27 Disability Determination Study Commission for the  
28 purpose of studying the procedures used and decisions  
29 made by the Disability Determination Services.

30 2. Staff and assistance. The commission shall  
31 be staffed by the Office of Legislative Assistants.  
32 All departments shall give prompt assistance to the  
33 commission. The Disability Determination Services  
34 shall give full cooperation to the commission and  
35 give unrestricted access to its records, except that  
36 claimant information shall be removed from records  
37 where necessary to protect confidentiality.

1           3. Membership. The commission shall have the  
2 following 12 members:

3           A. Four members of the Legislature, including 2  
4 Senators and 2 Representatives;

5           B. Two legal advocates experienced in repre-  
6 senting disability claimants in proceedings  
7 before the Disability Determination Services and  
8 the United States Social Security Administration;

9           C. One member from an advocacy organization for  
10 the developmentally disabled;

11           D. One member from a mental health advocacy  
12 organization;

13           E. One member from a private advocacy organiza-  
14 tion for Maine's disabled;

15           F. One member from the Disability Determination  
16 Services;

17           G. One member who is a licensed physician; and

18           H. One member who is an administrative law judge  
19 with experience in hearing social security dis-  
20 ability appeals.

21           4. Appointment. The Senators shall be appointed  
22 by the President of the Senate and the Representa-  
23 tives by the Speaker of the House of Representatives.

24 Any vacancy may be filled by the appointing officer.  
25 The Speaker of the House of Representatives shall  
26 appoint members listed in subsection 3, paragraphs B,  
27 C and D. The President of the Senate shall appoint  
28 members listed in subsection 3, paragraphs E, F, G  
29 and H. All members shall serve until the commission  
30 makes its final report.

31           5. Duties. The commission shall inquire into  
32 the quality and conduct of disability determinations  
33 made by the Disability Determination Services,  
34 including, but not limited to, the following areas of  
35 inquiry:

- 1           A. The discrepancy between the disability cri-  
2           teria applied by the Disability Determination  
3           Services and the criteria applied by Social  
4           Security Administrative Law Judges;
- 5           B. The issue of whether to require the Disabil-  
6           ity Determination Services to follow the United  
7           States Social Security Administration policy and  
8           rules promulgated under the Administrative Proce-  
9           dure Act, United States Code, Title 5, Section  
10          701, if there is any inconsistency between policy  
11          and rules promulgated under that Act and the  
12          United States Social Security Administration  
13          policy and rules not promulgated under that Act;
- 14          C. The adequacy of consultative examinations  
15          which are arranged by Disability Determination  
16          Services;
- 17          D. The adequacy of medical personnel on the  
18          staff of Disability Determination Services;
- 19          E. The adequacy of staffing among Disability  
20          Determination Services claims examiners;
- 21          F. The need for training of any individuals  
22          involved in the disability determination process;
- 23          G. The high rate of unfavorable determinations  
24          made by the Disability Determination Services  
25          which are overturned by the United States Social  
26          Security Administrative Law Judges;
- 27          H. The adequacy of development by Disability  
28          Determination Services of the medical records of  
29          claimants;
- 30          I. Whether certain types of impairments have  
31          been targeted by the United States Social Secur-  
32          ity Administration or Disability Determination  
33          Services for more strict scrutiny than other  
34          impairments;
- 35          J. Whether Disability Determination Services  
36          receives sufficient funding to perform disability  
37          determinations adequately;

1           K. The administrative costs of the high reversal  
2 rates of Disability Determination Services deci-  
3 sions; and

4           L. Whether the State should notify the United  
5 States Social Security Administration that the  
6 State will no longer make disability determina-  
7 tions under the United States Social Security  
8 Act, Section 221.

9           6. Reports. The commission shall present its  
10 findings, together with any suggested legislation, to  
11 the Second Regular Session of the 111th Legislature.

12           7. Pay. The members shall serve without pay but  
13 shall be reimbursed as provided in section 2.

14           Sec. 2. Appropriation. The following funds are  
15 appropriated from the General Fund to carry out the  
16 purposes of this Act.

17 1982-83

18 DISABILITY DETERMINATION STUDY  
19 COMMISSION

20           All Other \$2,000

21           These funds shall be used to reimburse  
22 members for reasonable travel and other  
23 expenses, and to cover the per diem ex-  
24 penses of the Legislators. Any unex-  
25 pended balance shall not lapse, but shall  
26 remain a continuing carrying account  
27 until the purpose of this Act has been  
28 accomplished.

29           Emergency clause. In view of the emergency cited  
30 in the preamble, this Act shall take effect when  
31 approved.

32 STATEMENT OF FACT

33           This bill establishes a legislative commission to  
34 study the administration of the Social Security Dis-  
35 ability Program in Maine by the Disability Determina-

1 tion Services and to report back to the Second  
2 Regular Session of the 111th Legislature.

3 Hundreds of severely disabled people have suf-  
4 fered over the past year by being cut off from sub-  
5 sistence level benefits under the Social Security  
6 Disability Program. Almost 2/3 of these denials are  
7 reversed on appeal.

8 A number of issues and problems with the state's  
9 system of reviewing eligibility for benefits under  
10 the program will be studied. These include the ade-  
11 quacy of staffing and staff training of service per-  
12 sonnel, consultative examinations of claimants, the  
13 high reversal rates of service decisions, the adequa-  
14 cy of staff medical personnel and medical records,  
15 and whether certain types of impairments have been  
16 targeted for stricter scrutiny than other impair-  
17 ments.

18 The study commission would report its findings  
19 back to the Legislature, along with any suggested  
20 legislation it recommends to remedy problems with the  
21 decision-making methods used by the service.

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