

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)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1630

H.P. 1176

House of Representatives, May 11, 1989

Reported by Representative LAPOINTE from the Subcommittee on Rehabilitation pursuant to Public Law 1987, chapter 779.

Reference to the Joint Standing Committee on Labor suggested and printing ordered under Joint Rule 18.

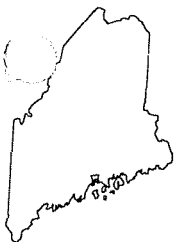
A handwritten signature in black ink that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

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

**An Act to Strengthen an Injured Employee's Right to Rehabilitation
and to Improve the Workers' Compensation Rehabilitation System.**



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

3 Sec. 1. 39 MRSA §57-B, sub-§§1 and 2, as enacted by PL 1985, c.
5 372, Pt. A, §23, are amended to read:

7 1. Panel. The Apportionment Review Panel, as established
9 by Title 5, chapter 379, shall be composed of 2 employee
representatives, 2 employer or insurer representatives and one
member representing medical ~~or-rehabilitation~~ professionals.

11 A. The members shall be appointed by the Governor for terms
13 of 3 years, except that initially one shall be appointed for
a term of one year, 2 for terms of 2 years and 2 for terms
15 of 3 years.

17 B. The Governor shall select one member to serve as
chairman chair.

19 C. Members shall serve without compensation, except for
21 reimbursement for travel and actual expenses necessarily
incurred in performance of their duties.

23 D. If a matter with which a member has any connection comes
25 before the panel, that member shall ~~excuse--himself~~ be
excused from hearing the matter.

27 E. The panel's recommendation must be by majority vote.

29 2. Payment for certain injuries. If an employee who has
31 completed ~~an-approved~~ a rehabilitation program under section 83,
whether implementation is approved or ordered by the
33 administrator, subsequently sustains a personal injury arising
out of and in the course of employment and that injury, in
35 combination with the prior injury, results in a reduction in
earning capacity which is substantially greater in duration or
37 degree, or both, than that which would have resulted from the
subsequent injury alone, taking into account the age, education,
employment opportunities and other factors related to the
39 employee, the employer at the time of the subsequent injury is
entitled to reimbursement from the Employment Rehabilitation Fund
41 as provided in this section. An employer is not entitled to
reimbursement from the fund in the event of subsequent injury if
43 an injured employee returns to ~~his~~ the employee's preinjury job
with the same employer without the provision of significant
45 rehabilitation services or significant modification of the
workplace.

47 Sec. 2. 39 MRSA §57-B, sub-§3, as amended by PL 1987, c. 560,
49 §4, is further amended to read:

51 3. Reimbursement. The employer shall be reimbursed at
least quarterly from the Employment Rehabilitation Fund for any

1 weekly wage replacement benefits for which he the employer is
3 liable under section 54-B, 55-B or 58-A, and which are paid by
that employer.

5 A. An employer entitled to reimbursement under this section
7 remains liable to the employee for all payments otherwise
required from him the employer by this Act and remains
9 responsible for carrying out the rehabilitation efforts
required by subchapter III-A as a result of the subsequent
injury.

11 B. A commissioner shall order a reduction, suspension or
13 termination of reimbursement of an employer under this
section if the commissioner finds that the employer has not
15 made a bona fide effort to return the employee to continuing
gainful suitable employment.

17 **Sec. 3. 39 MRSA §57-B, sub-§6**, as enacted by PL 1985, c. 372,
19 Pt. A, §23, is amended to read:

21 6. **Hiring incentive; wage credit.** If an employer hires an
employee after the employee has completed an ~~an~~ approved a
23 rehabilitation program under section 83, whether implementation
is approved or ordered by the administrator, that subsequent
25 employer may apply for a wage credit under this subsection. For
the purposes of this subsection, the term "employer" does not
27 include the insurer of a subsequent employer or the same employer
for whom an employee worked when he the employee sustained the
29 injury for which he the employee received rehabilitation.

31 A. The subsequent employer must file an application for a
wage credit by providing the administrator, within 2 weeks
33 after the close of the first 90 days of employment of the
employee, with a statement of the total direct wages,
35 earnings or salary he the employer paid to the employee for
the first 90 days of employment along with such verification
37 as may be required by rule of the commission. Within 2
weeks after the close of the first 180 days of employment,
39 the subsequent employer must provide to the administrator a
supplemental report of the direct wages, earnings and salary
41 for the 2nd 90-day period, along with the required
verification.

43 B. The administrator shall compute the wage credit which
45 shall consist of a sum equal to 50% of the average weekly
direct wages, earnings or salary for the 90-day period
47 listed in the subsequent employer's application or
statement, but not to exceed the amount of workers'
49 compensation benefits which the employee did not receive
because of the employment, but would have been entitled to
51 for the wage credit period, based on the average weekly
workers' compensation benefits during the most recent 60-day

1 period in which he the employee did receive benefits
preceding his the employee's hiring by the employer.

3
4 (1) On adequate verification of the application or
5 statement, the administrator shall pay the amount for
6 each 90-day period in a lump sum to the subsequent
7 employer within 30 days of receiving the application or
8 statement.

9
10 (2) The administrator shall bill these sums to the
11 insurer or self-insurer that was responsible for
12 payment of the compensation received by the employee
13 immediately before his the employee's hiring by the
14 subsequent employer. When the sum is received from the
15 insurer or self-insurer, the administrator shall
16 deposit it in the Employment Rehabilitation Fund.

17
18 C. If the employment with the subsequent employer is
19 terminated by the employer without good cause before the
20 completion of 12 consecutive months of employment, the
21 subsequent employer shall return to the administrator all
22 wage credits received by him the employer for that employee
23 and all sums paid into the Employment Rehabilitation Fund by
24 the insurer or self-insurer shall be returned to that
25 insurer or self-insurer.

26
27 D. When the wage credit is paid from the fund to an
28 employer, the insurer or self-insurer who paid the sum into
29 the fund has no further obligation to pay any sums into the
30 fund for any future reemployment of that employee, except as
31 provided in paragraph E.

32
33 E. Wage credits shall apply to trial work periods with a
34 subsequent employer under a rehabilitation plan.

35
36 (1) Total wage credit payments under a plan may not
37 exceed a period of 180 days, not including periods
38 subject to refunds under paragraph C.

39
40 (2) The commission shall inform subsequent employers
41 of the number of days of wage credits available, if it
42 is less than 180 days.

43
44 F. Wage credit payments are not dependent on the receipt by
45 the fund of payments from an insurer or self-insurer.

46
47 **Sec. 4. 39 MRSA §57-B, sub-§6-A is enacted to read:**

48
49 6-A. Plan implementation costs; payment; reimbursement.
50 The actual and direct costs of implementing plans ordered by the
51 administrator under section 85, subsection 2-A, shall be paid
from the fund. Payments shall be made directly to the

1 rehabilitation providers or other persons who provide services
2 under the plan. Upon an order of recovery of plan implementation
3 costs under section 85, subsection 4-A, the administrator shall
4 assess the employer who refused to agree to implement the plan
5 under section 83, subsection 4, paragraph A, an amount equal to 2
6 times the costs paid from the fund under this subsection. An
7 employer may appeal the imposition or amount of this assessment
8 as provided in section 88. The employee shall not be a party to
9 this appeal.

11 **Sec. 5. 39 MRSA §57-B, sub-§§8 and 11**, as enacted by PL 1985,
12 c. 372, Pt. A, §23, are amended to read:

13
14 **8. Legal representation.** The Attorney General shall
15 provide legal representation for any claim made under this
16 section, including the enforcement of an assessment made under
17 subsection 6-A or the defense of an employer's appeal of that
18 assessment.

19
20 A. The reasonable expense of prosecution or defense by the
21 Attorney General of assessments to or claims against the
22 Employment Rehabilitation Fund shall, subject to the
23 approval of the commission, be payable out of the Employment
24 Rehabilitation Fund.

25
26 B. The Attorney General shall not prosecute an assessment
27 against the State, nor shall defend the Employment
28 Rehabilitation Fund against any claim brought by the State.
29 The commission may hire, using money from the Employment
30 Rehabilitation Fund, private counsel for this purpose.

31
32 **11. Freedom from liability.** The State is not liable for
33 any claim against the Employment Rehabilitation Fund that is in
34 excess of the fund's current ability to pay. If any employer's
35 claim against the fund is denied due to an inadequate fund
36 balance, that employer's claim is entitled to priority over later
37 claims when an adequate balance is restored.

38 **Sec. 6. 39 MRSA §66-A, sub-§3**, as enacted by PL 1987, c. 559,
39 Pt. B, §35, is amended to read:

40
41 **3. Time period; discrimination prohibited.** The employer's
42 obligation to reinstate the employee continues until one-year 3
43 years after the employee has reached the stage of maximum medical
44 improvement in the judgment of the commission. An employer who
45 reinstates an employee under this section may not subsequently
46 discriminate against that employee in any employment decision,
47 including decisions related to tenure, promotion, transfer or
48 reemployment following a layoff, because of the employee's
49 assertion of a claim or right under this Act. Nothing in this
50 subsection may be construed to limit any protection offered to an
51 employee by section 111.

1
3 **Sec. 7. 39 MRSA §82, sub-§3, ¶B**, as enacted by PL 1985, c. 372,
Pt. A, §29, is repealed and the following enacted in its place:

5 B. The administrator shall:

7 (1) Monitor the rehabilitation system established
9 under this subchapter;

11 (2) Monitor individual cases where appropriate;

13 (3) Monitor all services provided to injured workers
15 as provided in section 84-A; and

17 (4) Encourage agreement and attempt to conciliate
19 differences on rehabilitation issues.

21 **Sec. 8. 39 MRSA §82, sub-§3, ¶C**, as enacted by PL 1985, c. 372,
23 Pt. A, §29, is amended to read:

25 C. The administrator shall approve agreements regarding
27 rehabilitation if he the administrator finds that they are
29 consistent with the purpose and requirements of this
31 subchapter and the rules of the commission and shall order
33 the implementation of plans only as provided in section 85,
35 subsection 2-A.

37 **Sec. 9. 39 MRSA §82, sub-§3, ¶H** is enacted to read:

39 H. The administrator shall attempt to ensure the
41 coordination of the rehabilitation system under this
43 subchapter with appropriate job training programs conducted
45 by the Department of Labor, including, without limitation,
47 the Job Training Partnership Act and the Strategic Training
49 for Accelerated Reemployment Program as provided in Title
51 26, chapter 25, and the Health Occupations Training Project
53 as provided in Title 26, chapter 31. The Department of
55 Labor shall cooperate with the administrator in implementing
57 this paragraph. At a minimum, the administrator shall
59 ensure that:

61 (1) Rehabilitation providers are aware of these job
63 training programs and make appropriate use of the
65 programs in the development of rehabilitation plans
67 under this subchapter; and

69 (2) Attempts are made to educate and inform injured
71 workers, who may not be eligible for rehabilitation
73 under this subchapter but who are in need of
75 reemployment assistance, of the availability of these

1 programs and their potential eligibility to participate
2 in the programs.

3
4 **Sec. 10. 39 MRSA §83, sub-§§2 to 4,** as enacted by PL 1985, c.
5 372, Pt. A, §29, are amended to read:

6 2. Evaluation of suitability. An evaluation of the
7 suitability of rehabilitation for the employee shall be submitted
8 to the administrator within 30 days after ~~the administrator makes~~
9 an order of evaluation is made or is deemed to have been made by
10 the administrator under section 85, subsection 1.

11
12 A. The evaluation of suitability shall be done by a
13 provider of rehabilitation services selected by the employee
14 from the list of approved providers maintained by the
15 administrator.

16
17 B. If the employer objects to the employee's selection, he
18 the employer may request within 10 business days after
19 notification of that selection that the administrator
20 schedule a meeting within 10 business days between the
21 employer, the employee and the administrator for the purpose
22 of discussing which provider may be mutually acceptable.

23
24 C. The employee shall have the final decision on which
25 approved provider shall be utilized.

26
27 D. The provider shall evaluate the employee's suitability
28 for rehabilitation under this subchapter. No employee may
29 be found to be suitable unless the following findings are
30 made by the provider:

31
32 (1) The employee is willing to participate in the
33 rehabilitation process;

34
35 (2) The employee's treating physician certifies that
36 some reasonable assessment of the employee's final
37 residual functioning capacities can be made;

38
39 (3) The employee's former employer certifies that the
40 employer is unlikely to return the employee to the
41 employee's former employment position or the
42 rehabilitation provider has made reasonable efforts to
43 obtain this certification without response from the
44 employer;

45
46 (4) The employee is unlikely to return to suitable
47 employment without the provision of rehabilitation
48 services; and
49

1 (5) No litigation is pending concerning the
3 compensability of the employee's injury or benefits or
 compensation due to the employee under this Act.

5 An employee who is found not to be suitable for
7 rehabilitation because of a failure to meet the criteria of
 subparagraph (2) or (5), may be reevaluated at a later date
9 when those criteria can be met.

11 3. **Development of plan.** A rehabilitation plan shall be
12 developed and submitted to the administrator within 60 days after
13 ~~the administrator makes~~ an order of plan development is made or
14 is deemed to have been made by the administrator under section
15 85, subsection 2.

17 A. The plan shall be developed by a provider of
18 rehabilitation services selected by the employee from the
19 list of approved providers maintained by the administrator.

21 B. In developing any plan, consideration shall be given to
22 the employee's qualifications, including, but not limited to:

23 (1) ~~His~~ The employee's work history;

25 (2) ~~His~~ The employee's interests;

27 (3) ~~His~~ The employee's aptitude;

29 (4) ~~His~~ The employee's education;

31 (5) ~~His~~ The employee's skills;

33 (6) ~~His~~ The employee's work life expectancy;

35 (7) The locality of employment; and

37 (8) The likelihood of reemployment.

39 C. A plan shall include a job placement strategy and a
40 specific program of proposed actions designed and likely to
41 achieve job placement for the employee.

43 (1) The plan development shall consider and the plan
44 may include a provision for trial work periods not to
45 exceed 3 months with the employer or subsequent
46 employer.

47 (2) The administrator may approve trial work periods
48 as part of a plan.

49 (3) The plan development shall consider and the plan
51 may include a provision for participation in

1 appropriate job training programs conducted by the
3 Department of Labor, including, without limitation, the
5 Job Training Partnership Act and the Strategic Training
7 for Accelerated Reemployment Program as provided in
 Title 26, chapter 25, and the Health Occupations
 Training Project as provided in Title 26, chapter 31.

9 **4. Implementation of plan.** The administrator shall approve
11 a plan if all parties agree on the plan and he the administrator
 finds it is consistent with the purpose and requirements of this
 subchapter and in the employee's best interests.

13 A. If the parties do not agree on a plan, an informal
15 conference shall be held within 21 days after the submission
17 of the rehabilitation plan under subsection 3, at which the
 administrator shall make every effort to encourage agreement
 and conciliate any differences or misunderstandings between
 the parties.

19 If the employer refuses to agree to the implementation of a
21 plan at the informal conference held under this paragraph,
23 the employee may petition the administrator for an order of
25 plan implementation under section 85, subsection 2-A. This
27 petition must be filed within 20 days of the informal
 conference. The employer is not a party to this petition
 and may not intervene or participate in the petition in any
 way.

29 B. All obligations under section 66-A are suspended during
31 the implementation of the plan.

33 **Sec. 11. 39 MRS §84, sub-§3,** as enacted by PL 1985, c. 372,
 Pt. A, §29, is repealed.

35 **Sec. 12. 39 MRS §85,** as enacted by PL 1985, c. 372, Pt. A,
37 §29, is amended to read:

39 **§85. Orders**

41 It is appropriate for the administrator to issue the
 following orders in the following circumstances.

43 **1. Order of evaluation.** When a compensable injury exists,
45 ~~and when the parties agree to an evaluation or~~ and the report
47 required under section 83, subsection 1, indicates that the
 employee is not likely to return to his the employee's previous
49 employment, the administrator shall order an evaluation of the
 suitability of rehabilitation for the employee. If the parties
51 agree to an evaluation, the order is deemed to have been made by
 the administrator unless notice to the contrary is received by
 the parties within 14 days after written notice of the agreement
 is sent to the administrator.

1
2. Order of plan development. When the administrator finds
3 that rehabilitation is suitable for the employee following the
4 submission of an evaluation of suitability under section 83,
5 subsection 2, he the administrator shall order the parties to
6 develop a rehabilitation plan. This order is deemed to have been
7 made by the administrator unless notice to the contrary is
8 received by the parties within 14 days after an evaluation
9 finding the employee to be suitable for rehabilitation is sent to
10 the administrator.

11
12 2-A. Order of plan implementation. The administrator shall
13 order the implementation of a rehabilitation plan only as
14 provided in this subsection.

15
16 A. Upon receiving an employee's petition for an order of
17 plan implementation under section 83, subsection 4,
18 paragraph A, the administrator shall determine whether the
19 proposed plan, if implemented, is likely to return the
20 injured employee to suitable employment at a reasonable cost
21 of implementation.

22
23 (1) The chair shall adopt rules subject to section 92,
24 subsection 1, providing standards for determinations
25 made under this paragraph.

26
27 B. If the administrator finds that the implementation of
28 the proposed plan is likely to return the injured employee
29 to suitable employment at a reasonable cost, the
30 administrator shall order the implementation of the plan.

31
32 C. Implementation costs of the plan shall be paid from the
33 Employment Rehabilitation Fund as provided in section 57-B,
34 subsection 6-A.

35
36 D. An employee may appeal the administrator's refusal to
37 issue an order of plan implementation under this subsection
38 as provided in section 88. The employer may not appeal the
39 administrator's decision in any case.

40
41 E. A petition for review brought during the pendency of a
42 petition for an order of plan implementation under section
43 83, subsection 4, paragraph A, or an appeal from a denial of
44 that petition under paragraph D, is subject to section 100,
45 subsection 3-A.

46
47 3. Order of plan review or modification. Upon request of a
48 party or the administrator, reports of an employee's progress
49 under a rehabilitation plan shall be made by the provider of
50 rehabilitation services to all the parties and the
51 administrator. The administrator, upon request of any party or
on his the administrator's own motion, may order the suspension,

1 termination or modification of a plan upon a showing of good
cause, including, but not limited to:

- 3
- 5 A. A changed physical condition which does not allow the
employee to continue pursuing the rehabilitation plan;
 - 7 B. The employee's performance level indicates he the
employee cannot complete the plan successfully;
 - 9 C. An employee does not cooperate with a plan;
 - 11 D. A change in the economic conditions that existed when
13 plan implementation began renders the plan unfeasible; or
 - 15 E. The employer and employee agree on the proposed plan
17 suspension, termination or modification.

19 4. Reinstatement of benefits. If the administrator orders
the suspension or termination of a plan, he the administrator may
21 also order the reinstatement of the employee's weekly benefits in
the amount being paid prior to the commencement of the plan if
23 that termination or suspension is for the reasons given under
subsection 3, paragraph A, B, D or E.

25 4-A. Order of implementation costs recovery. If an injured
employee returns to suitable employment after completing a
rehabilitation plan ordered under subsection 2-A, the
administrator shall order the employer who refused to agree to
implement the plan to pay reimbursement to the Employment
Rehabilitation Fund as provided in section 57-B, subsection 6-A.

31 A. As used in this subsection, "return to suitable
employment" means that the employee has been employed in a
position or positions contemplated by the rehabilitation
plan for a period of at least 6 consecutive months beginning
within 6 months after completion of the rehabilitation
program.

39 5. Procedures. The administrator shall make any order
under this subchapter within 30 days. Resolutions must be based
41 on adequate information and arrived at in a summary manner.

43 A. The administrator is not to be bound by the Maine Rules
of Evidence or the Maine Rules of Civil Procedure, except to
45 the extent that may be provided in the commission's rules to
protect the interests of the parties.

47 B. The order shall be filed in the office of the
49 commission, and a copy of the order attested by the clerk of
the commission mailed immediately to all parties interested
51 and to the attorney of record of each party.

1 C. The administrator shall, upon the request of a party
2 made as a motion within 20 days after notice of the order,
3 or may upon his the administrator's own motion find the
4 facts specially and state separately his the conclusions of
5 law thereon. Those findings and conclusions shall be filed
6 in the office of the commission and a copy of the findings
7 and conclusions shall be mailed immediately to all
8 interested parties.

9
10 D. The running of the time for appeal under section 88 is
11 stopped by a timely motion made under this section. The
12 full time for this appeal recommences on the receipt of
13 notice of the filing of those findings, conclusions or
14 revised order.

15 **Sec. 13. 39 MRSA §86, sub-§7,** as amended by PL 1987, c. 779,
16 §6, is further amended to read:

17
18 7. Career retraining. A goal-oriented period of formal
19 training which is designed to lead to employment in another
20 career field. Retraining may include education of the employee
21 when appropriate.

22
23 **Sec. 14. 39 MRSA §86-A,** as enacted by PL 1987, c. 559, Pt. B,
24 §38, is repealed.

25
26 **Sec. 15. 39 MRSA §87, sub-§3,** as enacted by PL 1985, c. 372,
27 Pt. A, §29, is amended to read:

28
29 3. Notice of controversy. An employer who considers the
30 costs of rehabilitation services, other than plan implementation
31 costs ordered to be reimbursed under section 85, subsection 4-A,
32 to be unreasonable may file a notice of controversy with the
33 administrator for determination thereof.

34
35 **Sec. 16. 39 MRSA §87, sub-§6,** as enacted by PL 1985, c. 372,
36 Pt. A, §29, is repealed.

37
38 **Sec. 17. 39 MRSA §88, sub-§4,** as enacted by PL 1985, c. 372,
39 Pt. A, §29, is amended to read:

40
41 4. Costs. Costs of appeal shall be allowed, including the
42 record and reasonable attorneys' attorney's fees as provided for
43 in section 110, except that costs of a petition for an order of
44 plan implementation under section 83, subsection 4, paragraph A,
45 or an appeal from a denial of that petition, are deemed to be
46 costs of plan implementation for any employee who prevails in the
47 action. These costs shall be paid from the Employment
48 Rehabilitation Fund and are recoverable upon the order of the
49 administrator under section 85, subsection 4-A. No attorney who
50 represents an employee who prevails before the commission may
51 recover any fee from that client for that representation if the
52 attorney receives

1 compensation for the representation from any other source as
3 provided in this Act. Any attorney who violates this subsection
5 shall lose his the attorney's fee and is liable in a court suit
to pay damages to the client equal to 2 times the fee charged
that client.

7 **Sec. 18. 39 MRSA §90, sub-§1**, as enacted by PL 1985, c. 372,
9 Pt. A, §29, is amended to read:

11 1. **Employees covered.** The provisions of this subchapter
13 apply only to employees injured after the effective date of this
15 subchapter, unless otherwise agreed by the parties and approved
17 by the administrator. ~~Notwithstanding any such agreement, the
provisions of section 87, subsection 6, shall not be construed to
permit reimbursement for any rehabilitation services provided
prior to the effective date of this subchapter.~~

19 **Sec. 19. 39 MRSA §90, sub-§3**, as enacted by PL 1985, c. 372,
Pt. A, §29, is repealed and the following enacted in its place:

21 **3. Report to Legislature.** The chair shall report to the
23 First Regular Session of the 116th Legislature concerning the
25 effectiveness of restoring injured workers to suitable employment
through orders for plan implementation under section 85,
subsection 2-A. This report shall include:

27 A. Statistics comparing the success rates of plans in which
29 implementation is ordered by the administrator with plans
which are agreed to by employers;

31 B. Statistics comparing the average implementation costs of
33 plans in which implementation is ordered by the
administrator with plans which are agreed to by employers;

35 C. Statistics comparing the types of rehabilitation
37 services used and job placements achieved for plans in which
implementation is ordered by the administrator with plans
39 which are agreed to by employers;

41 D. Any perceptible effect that the ability of the
43 administrator to order plan implementation has had upon the
likelihood of employers agreeing to implement plans;

45 E. The methods employed to achieve coordination of the
47 workers' compensation rehabilitation system with job
training programs conducted by the Department of Labor and
the effects of that coordination; and

49 F. Any other information that the chair considers
51 appropriate.

1 **Sec. 20. Application.** This Act applies to all employees
injured on or after January 1, 1986.

3
5 **STATEMENT OF FACT**

7 This bill is the result of a study conducted by the
8 Rehabilitation Subcommittee pursuant to Public Law 1987, chapter
9 779. The bill amends the workers' compensation rehabilitation
10 system to improve administrative efficiency, to streamline
11 bureaucratic requirements for rehabilitation providers, to ensure
conservative use of the system's rehabilitation resources and to
12 strengthen an injured worker's right to vocational rehabilitation
and reemployment.

13
14 Sections 1 to 5 of the bill repeal a provision authorizing
the appointment of a rehabilitation provider to the Apportionment
15 Review Panel established to oversee disputes involving the
16 apportionment of liability between an insurer and the Employment
17 Rehabilitation Fund for subsequent injuries suffered by a
18 rehabilitated employee. Since the determinations made by this
panel are of a medical nature, it is more appropriate that a
19 medical professional serve on the panel.
20
21

22 The bill also clarifies the right of a subsequent employer
of an employee who receives rehabilitation upon the order of the
23 rehabilitation administrator, as provided under section 12 of
24 this bill, to receive wage credits from the Employment
25 Rehabilitation Fund as well as to be reimbursed for workers'
26 compensation liability caused by an injury incurred by the
27 employee after being rehired.
28
29

30 The bill also provides a method of reimbursement to the fund
for the costs of implementing rehabilitation plans ordered by the
31 administrator under section 12 of this bill. An employer or
insurer who refuses to agree to the implementation of a plan
32 which, after being ordered by the administrator, proves to be
33 successful will pay an assessment to the fund equal to twice the
34 implementation costs. The section also clarifies the Attorney
35 General's duty to represent the fund in collecting these
36 assessments and further clarifies that claims against the fund
37 for implementation costs will receive the same priority as all
38 other claims. As under current law, the State is not liable for
39 these claims in any event.
40
41

42 Section 6 of the bill extends the time period within which
an employer is required to rehire an injured worker from one year
43 after the employee reaches maximum medical improvement to 3 years.
44
45

46 Sections 7 to 9 of the bill clarify the duties of the
rehabilitation administrator, as they are changed by this bill.
47 This includes a directive to shift to the use of a
48
49

1 "macro-monitoring" system from the present individualized
3 monitoring performed by the rehabilitation administrator. Under
5 the bill, the administrator will monitor individual cases only
when necessary, but will keep track of each system participant's
general record to curb abuses and identify systemic problem areas.

7 These sections also require the administrator, in
9 cooperation with the Department of Labor, to coordinate the
workers' compensation rehabilitation system with the job training
11 programs offered by the Department of Labor. The intent of this
provision is to avoid duplication of programs, to reduce costs by
13 encouraging the use in rehabilitation plans of training services
supplied by the Department of Labor and to employ the proven
15 return-to-work methods of these training programs to find new
employment for injured workers.

17 Section 10 establishes criteria upon which an employee's
suitability for rehabilitation will be evaluated. These criteria
19 ensure that the employee is not brought into the rehabilitation
system before the employee is ready for rehabilitation to begin.
21 These criteria help to control rehabilitation costs by ensuring
that only those employees who are likely to benefit from
23 rehabilitation enter the system.

25 Section 10 also establishes an employee's right to
rehabilitation under the bill for all employees who have been
27 found to be suitable for rehabilitation and have had an
appropriate rehabilitation plan developed. Under the present
29 system, an employer or insurer can veto the actual implementation
of that plan for any or no reason. Section 10 allows an employee
31 whose plan has been vetoed by an employer or insurer to petition
the rehabilitation administrator to order the implementation of
33 the plan. The employee must file the petition within 20 days of
the informal conference at which the employer or insurer refuses
35 to agree to the plan. The employer or insurer is not a party to
this petition and may not intervene in the case in any way.

37
39 Section 11 of the bill repeals a reference to reimbursement
for unsuccessful rehabilitation plans since the referenced
provision is repealed by section 16 of this bill.

41
43 Section 11 of the bill, together with section 12 of the
bill, reduces the bureaucratic requirements of the system during
45 the actual rehabilitation process. Under the bill, the
rehabilitation administrator does not have to issue an order in
47 every case before the rehabilitation provider can proceed with an
evaluation of suitability for an employee or develop a
49 rehabilitation plan. The administrator's order is automatically
issued under the bill 14 days after notice is provided to the
51 administrator that the parties are ready to proceed, except that
the administrator may intervene in appropriate instances by
notifying the parties before that date that the order is withheld.

1
3 Section 12 of the bill authorizes the rehabilitation
5 administrator to issue orders of plan implementation. When an
7 employee requests the administrator to order plan implementation
9 after the employer or insurer has refused to agree to the plan,
11 the administrator will determine whether the plan is likely to
13 return the employee to suitable employment at a reasonable cost.
15 If the administrator finds that it would, the petition will be
17 granted and the costs of implementing the plan will be paid from
19 the Employment Rehabilitation Fund. The employee may appeal the
21 administrator's decision if the petition is denied. To prevent
23 obstruction of the rehabilitation process, no petition for review
25 may be filed while a petition or appeal is pending unless the
27 injured employee's medical condition is substantially changed.
29 If the rehabilitation plan successfully returns the employee to
31 suitable employment, an amount equal to twice the costs of
33 implementing the plan is assessed against the employer or insurer
35 who refused to approve the plan initially.

21 Section 13 of the bill clarifies the nature of retraining
23 available under the Workers' Compensation Act by expressly
25 authorizing education of the employee, when appropriate.

25 Section 14 of the bill repeals the mandatory retraining
27 section of current law, since these services are available as
29 necessary through the standard rehabilitation process under this
31 bill.

29 Section 15 of the bill clarifies that if an employer or
31 insurer wishes to contest the costs of plan implementation
33 assessed against that employer or insurer as provided in section
35 1 of this bill, the employer or insurer must file an appeal from
37 the administrator's order rather than a notice of controversy.

35 Section 16 of the bill repeals the provisions that authorize
37 the reimbursement of plan implementation costs if a
39 rehabilitation plan proves to be unsuccessful. If this provision
41 was retained, an employer or insurer would simply approve all
43 rehabilitation plans to avoid the penalty of paying the double
45 assessment of costs for plans ordered by the administrator under
47 the bill. The bill requires every employer and insurer to
49 carefully evaluate each rehabilitation plan to determine which
51 plans are likely to succeed and encourages them to participate in
formulating these plans to avoid the potential penalty of the
double assessment.

47 Section 17 of the bill clarifies the provisions governing
49 the payment of attorney fees in the rehabilitation system and
51 provides that the costs of a successful petition for plan
implementation or the costs of a successful appeal from a denial
of that petition are considered to be plan implementation costs
which may be recovered from an employer under the bill.

1
3
5
7
9

Sections 18 and 19 of the bill require the Workers' Compensation Commission to submit a report on the effectiveness of this legislation to the First Regular Session of the 116th Legislature. Due to the long lag-time for cases to be processed in the system, it is necessary to allow the full 3-year period of operation under the bill to obtain an accurate view of the bill's effectiveness.

11
13
15
17
19

Section 20 provides that the bill will apply to all employees who were injured on or after January 1, 1986, which is the effective date of the original rehabilitation law. This allows for administrative efficiency by avoiding a multiplicity of laws governing different employees depending upon the date of their injuries. It will not permit every employee who has suffered an injury on or after that date to seek an order of plan implementation under the bill since most of those employees will not be able to meet the time requirements established under the bill to file the petition for an order of plan implementation.