

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
115TH LEGISLATURE
THIRD SPECIAL SESSION

SENATE AMENDMENT "E" to HOUSE AMENDMENT "C" to H.P. 1783,
L.D. 2464, Bill, "An Act to Reform the Workers' Compensation Act
and Workers' Compensation Insurance Laws"

Amend the amendment by striking out all of page 1 after the
title, all of pages 2 to 6 and page 7, lines 1 to 34 and
inserting in their place the following:

'Amend the bill by striking out all of Part A and inserting
in its place the following:

'Sec. A-1. 5 MRSA §12004-G, sub-§35 is enacted to read:

35.	Workers' Com-	Lost wages	39 MRSA
Workers'	pensation	up to	§131
Compensation	Board	\$100; ex-	
		penses	

Sec. A-2. 39 MRSA c. 1, sub-c. VI is enacted to read:

SUBCHAPTER VI

WORKERS' COMPENSATION BOARD

§131. Workers' Compensation Board

1. Board established. Pursuant to Title 5, section 12004-G, subsection 35, the Workers' Compensation Board is established as an independent board composed of 8 members. The members of the board must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review by the joint standing committee of the Legislature having jurisdiction over state and local government matters and confirmation by the Legislature. Notwithstanding the provisions of Title 3, section 151, the designated committee shall complete

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

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

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

20 A member of the board may not be a lobbyist required to be
21 registered with the Secretary of State.

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

27 The Governor shall initially designate one member representing
28 management and one member representing labor for terms expiring
29 February 1, 1994; one member representing management and one
30 member representing labor for terms expiring February 1, 1995;
31 one member representing management and one member representing
32 labor for terms expiring February 1, 1996; and one member
33 representing management and one member representing labor for
34 terms expiring February 1, 1997.

35 2. Removal. Board members hold office for the terms
36 provided, unless removed, and until their successors are
37 appointed and qualified. They must be sworn and may be removed
38 by the Governor for inefficiency, willful neglect of duty or
39 malfeasance in office, but only with the review and concurrence
40 of the joint standing committee of the Legislature having
41 jurisdiction over state and local government matters upon hearing
42 in executive session or by impeachment. Before removing a board
43 member, the Governor shall notify the President of the Senate and
44 the Speaker of the House of Representatives of the removal and
45 the reasons for the removal.

2 3. Vacancies. If a vacancy occurs during a term of a
4 member, the Governor shall appoint a replacement to fill the
6 unexpired part of the term. The replacement must be from the
8 group represented by the member being replaced. In case the
 office of chair becomes vacant, the board member who has served
 for the longest period of time shall act as chair until the
 Governor makes an appointment to fill the vacancy.

10 4. Chair. The board shall annually elect one of its members
12 to serve as chair for a one-year term expiring February 1st each
14 year. The term as chair of the first member elected to that
 position expires February 1, 1994. The chair must alternate
 between management and labor members. The chair may vote on all
 matters before the board.

16 5. Voting requirements. The board may take action only by
18 majority vote of its membership. Decisions regarding the
20 employment of an executive director and the appointment and
22 retention of hearing officers require the affirmative votes of at
 least 2 board members representing management and at least 2
 board members representing labor.

24 6. Salary; expenses. A board member is entitled to a per
26 diem of \$100 per day. Members of the board receive their actual,
 necessary, cash expenses while on official business of the board.

28 7. Leave of absence. An employer may not terminate the
30 employment of an employee who is appointed as a member of the
32 board because of the exercise by the employee of duties required
34 as a board member. The member is entitled to a leave of absence
 from employment for the period of time required to perform the
 duties of a board member. During the leave of absence, the
 member may not be subjected to loss of time, vacation time, or
 benefits of employment, excluding salary.

36 8. Headquarters; regional offices. The board must have its
38 central office in the Augusta area and such district offices as
40 it may choose to establish. The board may hold sessions at any
 place within the State.

42 9. Seal. The board must have a seal bearing the words
44 "Workers' Compensation Board of Maine."

46 §132. Authority of board; administration

48 1. General responsibility. The board has general
50 supervision over the administration of this Title and
 responsibility for the efficient and effective management of the
 board and its employees.

2 **2. Rules.** Subject to any applicable requirements of the
4 Maine Administrative Procedure Act, the board shall adopt rules
6 to accomplish the purposes of this Title. Those rules may define
8 terms, prescribe forms and make suitable orders of procedure to
10 ensure the speedy, efficient, just and inexpensive disposition of
12 all proceedings under this Title.

14 The board shall adopt rules establishing a policy and procedures
16 to safeguard the confidentiality of the records of the former
18 Workers' Compensation Commission and the Workers' Compensation
20 Board pertaining to individual injured employees. The policy
22 must make records available on a need-to-know basis.

24 **3. Employment of executive director.** The board shall
26 employ an executive director who shall conduct the day-to-day
28 operations of the board in accordance with policies established
30 by the board and otherwise implement board policy. Except as
32 otherwise provided, the executive director shall, at the
34 direction of the board, hire personnel as necessary to administer
36 this Title, subject to the Civil Service Law. The executive
38 director is an unclassified employee serving at the pleasure of
40 the board.

42 **4. Employment of general counsel.** The board shall employ a
44 general counsel, who is the legal adviser to the board and who
46 shall perform such other duties as may be assigned by the board,
48 and assistants as necessary. The general counsel and assistants
50 to the general counsel are unclassified employees, serve at the
pleasure of the board and are not subject to the Civil Service
Law.

5. Employment of and contracts with hearing officers and
mediators. The board shall obtain the services of persons
qualified by background and training to serve as hearing
officers, who are authorized to take action and enter orders
consistent with this Act in all cases assigned to them by the
board, and mediators. In the exercise of its discretion, the
board may obtain the services of hearing officers and mediators
by either of the 2 following methods:

A. The board may contract for the services of hearing
officers and mediators, in which case they must be paid
reasonable per diem fees for their services plus
reimbursement of their actual, necessary and reasonable
expenses incurred in the performance of their duties,
consistent with policies established by the board; or

B. The board may employ hearing officers and mediators to
serve at the pleasure of the board and who are not subject
to the Civil Service Law. They are entitled to receive

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reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the board.

6. Hiring of personnel. The board shall appoint the directors of the bureaus and divisions of the board and their deputies and assistants, who are unclassified employees, serve at the pleasure of the board and are not subject to the Civil Service Law.

7. Powers and duties of board. The board has all powers as are necessary to carry out its functions under the law. The board may delegate any powers and duties as necessary.

8. Conflict of interest. Each member of the board and each employee, contractor, agent or other representative of the board are "executive employees" for purposes of Title 5, section 18 and are subject to the limitations of that section. In addition, Title 17, section 3104 is applicable, in accordance with its provisions, to all such representatives of the board.

9. Accepting gifts, grants or donations. The board may accept gifts, grants or donations for the use of the board as provided by rules adopted by the board.

10. Case administration. The board shall assume an active and forceful role in the administration of this Title and the commission to ensure that the system operates efficiently and with maximum benefit to both employers and employees. It shall continually monitor individual cases to ensure that benefits are provided in accordance with this Title.

11. Recommending legislative change. The board shall consider and recommend to the Legislature changes in this Title. Recommended changes must be forwarded to the Legislature on or before December 1st of each even-numbered year.

12. Advisory committees. The board may appoint advisory committees as it determines necessary to assist the board in matters that arise under this Title. Advisory committee members are not entitled to compensation but may be reimbursed for travel and reasonable expenses as determined by the board.

13. Budget. The board shall administer its budget, with the assistance of the executive director.

§133. Board actions

In addition to other actions required of or permitted the board under this Title, the board shall perform the actions

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2 required by this section to ensure just and efficient
administration of claims.

4 1. Monitor payments. The board shall monitor cases to
6 ensure that:

8 A. Payments are initiated within the time limits
established in section 205; and

10 B. Payments to the employee provide the full amount of
12 compensation to which the employee is entitled and are
properly indicated on the memorandum of payment.

14 2. Troubleshooter program. The board shall establish a
16 troubleshooter program to provide information and assistance to
participants in the workers' compensation system. The
18 troubleshooter may meet or otherwise communicate with employees,
employers, insurance carriers and health care providers in order
20 to prevent or informally resolve disputes.

22 3. Construction. In interpreting this Title, the board
24 shall construe it so as to ensure the efficient delivery of
compensation to injured employees at a reasonable cost to
26 employers. All workers' compensation cases must be decided on
their merits and the rule of liberal construction does not
28 apply. Accordingly, this Title is not to be given a construction
in favor of the employee, nor are the rights and interests of the
employer to be favored over those of the employee.

30 4. Information. The board shall require the employee,
32 employer or insurer to provide it with any information it
reasonably determines necessary to monitor cases, including, but
34 not limited to, preinjury and postinjury wage statements.

36 5. Abuse investigation unit. The board shall provide
adequate funding for an abuse investigation unit.

38 A. The board shall, subject to the Civil Service Law,
40 appoint at least 2 abuse investigators who must be qualified
by experience and training to perform their duties.

42 B. The unit shall, at the direction of the board,
44 investigate all complaints or allegations of fraud, illegal
or improper conduct or violation of this Title or rules of
46 the board relating to workers' compensation insurance,
benefits or programs, including those acts by employers,
48 employees or insurers. All records, correspondence and
reports of investigation in connection with actual or
50 alleged fraud, illegal or improper conduct or violation of
this Title or rules of the board and all records,
correspondence and reports of criminal prosecution or civil

2 action are confidential. The confidential nature of any
3 such record, correspondence or report does not limit or
4 affect the use of those materials in any prosecution or
5 action.

6 C. Each employer or employee and each state, county,
7 municipal or quasi-governmental agency shall cooperate fully
8 with the unit and provide any information requested by it.

10 D. The unit shall report all its findings to the board.

12 E. Whenever the board determines that a fraud, attempted
13 fraud or violation of this Title or rules of the board may
14 have occurred, the board shall report in writing all
15 information concerning it to the Attorney General or the
16 Attorney General's delegate for appropriate action,
17 including a civil action for recovery of funds and criminal
18 prosecution by the Attorney General.

20 6. Mediation. The board shall establish a mediation
21 program to provide mediation services to parties to workers'
22 compensation cases.

24 7. Investigation. The board may, when the interests of any
25 of the parties or when the administration of this Title demands,
26 appoint a person to make a full investigation of the
27 circumstances surrounding any industrial injury or any matter
28 connected to an industrial injury, or conduct an audit and report
29 the same without delay to the board.

30 8. Impairment guidelines. In order to reduce litigation
31 and establish more certainty and uniformity in the rating of
32 permanent impairment, the board shall establish by rule a
33 schedule for determining the existence and degree of permanent
34 impairment based upon medically or scientifically demonstrable
35 findings. The schedule must be based on generally accepted
36 medical standards for determining impairment and may incorporate
37 all or part of any one or more generally accepted schedules used
38 for that purpose, such as the American Medical Association's
39 "Guides to the Evaluation of Permanent Impairment." Pending the
40 adoption of a permanent schedule, "Guides to the Evaluation of
41 Permanent Impairment," 3rd edition, copyright 1990, by the
42 American Medical Association, is the temporary schedule and must
43 be used for the purposes of this subsection.

46 **§134. Dedicated fund; assessment on workers' compensation**
47 **insurers and self-insured employers**

48 The Workers' Compensation Board Administrative Fund is
49 established to accomplish the purposes of this Title. All income
50 generated pursuant to this section must be recorded on the books

2 of the State in a separate account and deposited with the
3 Treasurer of State and be credited to the Workers' Compensation
4 Board Administrative Fund.

6 1. Use of fund. All money credited to the Workers'
7 Compensation Board Administrative Fund must be used to support
8 the activities of the board and for no other purpose. Any
9 balance remaining continues from year to year as a fund available
10 for the purposes set out in this section and for no other purpose.

12 2. Expenditures. Expenditures from the Workers'
13 Compensation Board Administrative Fund are subject to legislative
14 approval and allocation in the same manner as appropriations are
15 made from the General Fund. The joint standing committee of the
16 Legislature having jurisdiction over appropriations and financial
17 affairs shall approve the allocation.

18 3. Assessment on workers' compensation insurers. Every
19 insurance company or association authorized to write workers'
20 compensation insurance in this State shall, for the purpose of
21 providing partial support and maintenance of the board, pay an
22 assessment on all gross direct premiums written, whether in cash
23 or in notes absolutely payable on contracts written on risks
24 located or resident in the State for workers' compensation
25 insurance, less return premiums and less all dividends paid to
26 policy holders.

28 4. Assessment on self-insured employers. Every
29 self-insured employer approved under this Title shall, for the
30 purpose of providing partial support and maintenance of the
31 board, pay an assessment on aggregate benefits paid by each
32 member.

34 5. Amounts of premiums and losses. The Bureau of Insurance
35 shall provide to the board the amounts of gross direct workers'
36 compensation premiums written by each insurance carrier and the
37 amounts of aggregate benefits paid by each self-insurer and group
38 self-insurer on or before August 1st of each year.

40 6. Assessment levied. The assessments levied under this
41 section may not produce more than \$6,000,000 in revenues annually
42 beginning in the 1993-94 fiscal year. The board shall determine
43 the assessments prior to March 1st and shall assess each
44 insurance company or association and self-insured employer its
45 pro rata share for expenditures during the fiscal year beginning
46 July 1st. Each insurance company or association and self-insured
47 employer shall pay the assessment on or before June 1st.

48 7. Insurance company or association collections. Insurance
49 companies or associations shall bill and collect assessments
50 under this section on insured employers. Such assessments must

be separately stated amounts on all premium notices and may not be reported as premiums for any tax or regulatory purpose or for the purpose of any other law.

8. Violations. Any insurance company, association or self-insured employer subject to this section that willfully fails to pay an assessment in accordance with this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged for each day following the due date for which payment is not made.

9. Deposit of funds; investment. All revenues derived from assessments levied against insurance companies, associations and self-insured employers described in this section must be reported and paid to the Treasurer of State and credited to the Workers' Compensation Board Administrative Fund. The Treasurer of State may invest the funds in accordance with state law. All interest must be paid to the fund.

Further amend the amendment by adding at the end the following:

'Further amend the bill by striking out all of Part E.'

FISCAL NOTE

This amendment retains the Workers' Compensation Board and its assessment funding mechanism but does not replace the Workers' Compensation Commission. The staffing and funding needs of the new board will increase administrative costs. The amount of the increase can not be determined at this time. In addition, the amendment does not provide interim funding for the board through the remainder of fiscal year 1992-93.

The amendment also eliminates the benefit changes proposed by the bill. The estimated benefit savings will not be realized.

STATEMENT OF FACT

This amendment strikes Parts A and E of the bill but retains that substantive portion of Part A that establishes the Workers' Compensation Board. The board would act in an oversight capacity

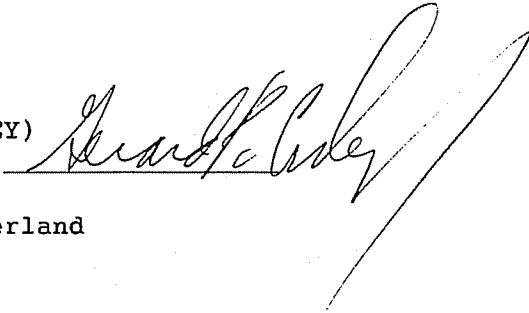
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2 over the current system. This amendment reflects changes made to
the bill by the Blue Ribbon Commission in those portions of the
bill this amendment retains.

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(Senator CONLEY)
SPONSORED BY:



COUNTY: Cumberland

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