

MAINE STATE LEGISLATURE

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R. of S.

L.D. 2464

(Filing No. S-801)

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STATE OF MAINE
SENATE
115TH LEGISLATURE
THIRD SPECIAL SESSION

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

Amend the bill in Part A in section 8 in that part designated "~~§106.~~" in the first paragraph in the last line (page 15, line 46 in L.D.) by inserting after the following: "14-A" the following: ', or for reimbursement of general assistance pursuant to Title 22, section 4318'

Further amend the bill in Part A in section 8 in that part designated "~~§151.~~" in subsection 1 by striking out all of the first paragraph (page 18, lines 4 to 12 in L.D.) and inserting in its place the following:

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

Further amend the bill in Part A in section 8 in that part designated "~~§151.~~" in subsection 1 by striking out all of the 4th paragraph (page 18, lines 30 to 33 in L.D.) and inserting in its place the following:

SENATE AMENDMENT

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SENATE AMENDMENT "1" to H.P. 1783, L.D. 2464

2 'A member of the board may not be a lobbyist required to be
3 registered with the Secretary of State, a service provider to the
4 workers' compensation system or a representative of a service
5 provider to the workers' compensation system.'

6 Further amend the bill in Part A in section 8 in that part
7 designated "~~§151.~~" in subsection 2 in the 7th line (page 19, line
8 4 in L.D.) by striking out the following: "judiciary" and
9 inserting in its place the following: 'state and local government'

10 Further amend the bill in Part A in section 8 in that part
11 designated "~~§152.~~" by striking out all of subsection 2 and
12 inserting in its place the following:

13 '2. Rules. Subject to any applicable requirements of the
14 Maine Administrative Procedure Act, the board shall adopt rules
15 to accomplish the purposes of this Act. Those rules may define
16 terms, prescribe forms and make suitable orders of procedure to
17 ensure the speedy, efficient, just and inexpensive disposition of
18 all proceedings under this Act.

19 The board shall adopt rules establishing a policy and procedures
20 to safeguard the confidentiality of the records of the former
21 Workers' Compensation Commission and the Workers' Compensation
22 Board pertaining to individual injured employees. The policy
23 must make records available on a need-to-know basis only and must
24 include legitimate research purposes while protecting individual
25 confidentiality.'

26 Further amend the bill in Part A in section 8 in that part
27 designated "~~§152.~~" in subsection 4 by striking out all of the
28 last sentence (page 20, lines 27 and 28 in L.D.) and inserting in
29 its place the following: 'The general counsel and assistants to
30 the general counsel are unclassified employees, serve at the
31 pleasure of the board and are not subject to the Civil Service
32 Law.'

33 Further amend the bill in Part A in section 8 in that part
34 designated "~~§152.~~" by striking out all of subsection 6 and
35 inserting in its place the following:

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

41 Further amend the bill in Part A in section 8 in that part
42 designated "~~§153.~~" by striking out all of subsection 8 and
43 inserting in its place the following:

2 '8. Impairment guidelines. The following provisions apply
4 regarding impairment guidelines.

6 A. In order to reduce litigation and establish more
8 certainty and uniformity in the rating of permanent
10 impairment, the board shall establish by rule a schedule for
12 determining the existence and degree of permanent impairment
14 based upon medically or scientifically demonstrable
16 findings. The schedule must be based on generally accepted
18 medical standards for determining impairment and may
20 incorporate all or part of any one or more generally
22 accepted schedules used for that purpose, such as the
24 American Medical Association's "Guides to the Evaluation of
26 Permanent Impairment." Pending the adoption of a permanent
28 schedule, "Guides to the Evaluation of Permanent
30 Impairment," 3rd edition, copyright 1990, by the American
32 Medical Association, is the temporary schedule and must be
34 used for the purposes of this subsection.

36 B. The board shall collect and analyze data from Maine
38 cases, studies from other states and generally accepted
40 medical guidelines for occupational impairment to examine
42 the feasibility and desirability of establishing an
44 objectively ascertainable functional capacity standard to be
46 used for determining eligibility for benefits under this Act
48 consistent with section 213, subsection 2.'

50 Further amend the bill in Part A in section 8 in that part
designated "§205." in subsection 9 by striking out all of
paragraphs A to C and inserting in their place the following:

32 'A. If the employee has returned to work with or has
34 received an increase in pay from an employer that is paying
36 compensation under this Act, that employer or that
38 employer's insurer or group self-insurer may discontinue or
40 reduce payments to the employee.

42 B. In all circumstances other than the return to work or
44 increase in pay of the employee under paragraph A, if the
46 employer, insurer or group self-insurer determines that the
48 employee is not eligible for compensation under this Act,
50 the employer, insurer or group self-insurer may discontinue
or reduce benefits only in accordance with this paragraph.

(1) If no order or award of compensation or
compensation scheme has been entered, the employer,
insurer or group self-insurer may discontinue or reduce
benefits by sending a certificate by certified mail to
the employee and to the board, together with any

2 information on which the employer, insurer or group
3 self-insurer relied to support the discontinuance or
4 reduction. The employer may discontinue or reduce
5 benefits no earlier than 21 days from the date the
6 certificate was mailed to the employee. The
7 certificate must advise the employee of the date when
8 the employee's benefits will be discontinued or
9 reduced, as well as other information as prescribed by
10 the board, including the employee's appeal rights.

11
12 (2) If an order or award of compensation or
13 compensation scheme has been entered, the employer,
14 insurer or group self-insurer shall petition the board
15 for an order to reduce or discontinue benefits and may
16 not reduce or discontinue benefits until the matter has
17 been finally resolved through the dispute resolution
18 procedures of this Act, any appeal proceedings have
19 been completed and an order of reduction or
20 discontinuance has been entered by the board.

21
22 C. The employee may file a petition for review, contesting
23 the employer's discontinuance or reduction of compensation
24 under this subsection. Regardless of whether the employee
25 files a petition prior to the date of the discontinuance or
26 reduction, benefits may be discontinued or reduced as
27 described in paragraph A or B.

28 D. The board, within 21 days after the employee filed a
29 petition for review, may enter an order providing for the
30 continuation or reinstatement of benefits pending a hearing
31 on the petition. The order must be based upon the
32 information submitted by both the employer, insurer or group
33 self-insurer and the employee under this subsection.

34
35 E. In all cases under this subsection, the board shall
36 provide for an expedited procedure that must be available
37 upon request of any party.

38
39 F. If benefits have been discontinued or reduced pursuant
40 to paragraph A or B and the board, after hearing, determines
41 that benefits have been wrongfully withheld, the board shall
42 order payment of all benefits withheld together with
43 interest at the rate of 6% a year. The employer shall pay
44 this amount within 10 days of the order.'

45
46 Further amend the bill in Part A in section 8 in that part
47 designated "§211." in the first paragraph in the 4th line (page
48 37, line 11 in L.D.) by striking out the following: "must be
adjusted annually" and inserting in its place the following: 'is

the higher of \$441 or 90% of the state average weekly wage as adjusted annually'

Further amend the bill in Part A in section 8 by striking out all of that part designated "~~§213.~~" and inserting in its place the following:

'§213. Compensation for partial incapacity

1. Benefit and duration. While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the disability if the employee's permanent impairment, determined according to the impairment guidelines adopted by the board pursuant to section 153, subsection 8 resulting from the personal injury is in excess of 15% to the body. In all other cases an employee is not eligible to receive compensation under this section after the employee has received 260 weeks of compensation under section 212, subsection 1, this section or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 260 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may not be delegated to a hearing officer and such decisions must be made expeditiously.

2. Threshold adjustment. Effective January 1, 1998 and every other January 1st thereafter, the board, using an independent actuarial review based upon actuarially sound data and methodology, must adjust the 15% impairment threshold established in subsection 1 so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. The actuarial review must include all cases receiving permanent impairment ratings on or after January 1, 1993, irrespective of date of injury, but may utilize a cutoff date of 90 days prior to each adjustment date to permit the collection and analysis of data. The data must be adjusted to reflect ultimate loss development. In order to ensure the accuracy of the data, the board shall require that all cases involving permanent injury, including those settled pursuant to section 352, include an impairment rating performed in accordance with the guidelines adopted by the board and either agreed to by the parties or determined by the board. Each adjusted threshold is applicable to all cases with dates of injury on or after the date of adjustment and prior to the date of the next adjustment.

2 3. Dates of injury between January 1, 1993 and January 1,
3 1998. An employee whose date of injury is between January 1,
4 1993 and January 1, 1998, who has not settled the claim pursuant
5 to section 352 and whose impairment rating is 15% or less to the
6 body but exceeds the adjusted threshold established pursuant to
7 subsection 2 on January 1, 1998 is entitled to compensation for
8 the duration of the disability. Reimbursement to the employer,
9 insurer or group self-insurer for the payment of all benefits
10 payable in excess of 260 weeks of compensation under this
11 subsection must be made from the Employment Rehabilitation Fund.

12 4. Extension of 260-week limitation. Effective January 1,
13 1998 and every January 1st thereafter, the 260-week limitation
14 contained in subsection 1 must be extended 52 weeks for every
15 year the board finds that the frequency of such cases involving
16 the payment of benefits under section 212 or 213 is no greater
17 than the national average based on frequency from the latest unit
18 statistical plan aggregate data for Maine and on a countrywide
19 basis, adjusted to a unified industry mix. The 260-week
20 limitation contained in subsection 1 may not be extended under
21 this subsection to more than 520 weeks. Reimbursement to the
22 employer, insurer or group self-insurer for the payment of all
23 benefits for additional weeks payable pursuant to this subsection
24 must be made from the Employment Rehabilitation Fund.'

25 Further amend the bill in Part A in section 8 in that part
26 designated "~~§215.~~" in subsection 1 in the first paragraph in the
27 2nd and 3rd lines from the end (page 42, lines 2 and 3 in L.D.)
28 by striking out the following: "the board may order the employer
29 to continue to pay the weekly compensation or some portion of
30 and inserting in its place the following: 'the employer shall
31 continue to pay or cause to be paid'

32 Further amend the bill in Part A in section 8 in that part
33 designated "~~§215.~~" in subsection 1 in the 2nd paragraph in the
34 11th to 13th lines (page 42, lines 16 to 18 in L.D.) by striking
35 out the following: "the board may order the employer to continue
36 to pay the weekly compensation, or some portion of" and inserting
37 in its place the following: 'the employer shall continue to pay
38 or cause to be paid'

39 Further amend the bill in Part A in section 8 in that part
40 designated "~~§325.~~" by striking out all of subsection 1 and
41 inserting in its place the following:

42 '1. Costs and attorney's fees. Except as otherwise provided
43 by law, by the Maine Rules of Civil Procedure or by rule of
44 court, each party is responsible for the payment of the party's
45 own costs and attorney's fees. In the event of a disagreement as
46 own costs and attorney's fees. In the event of a disagreement as
47 own costs and attorney's fees. In the event of a disagreement as
48 own costs and attorney's fees. In the event of a disagreement as
49 own costs and attorney's fees. In the event of a disagreement as
50 own costs and attorney's fees. In the event of a disagreement as

2 to those costs or fees, an interested party may apply to the
3 board for a hearing.'

4 Further amend the bill in Part A in section 8 in that part
5 designated "~~§325.~~" in subsection 2 in the 6th line (page 69, line
6 25 in L.D.) by inserting after the following: "board." the
7 following: 'The board may approve the payment of attorney's fees
8 by the employee for services provided to the employee pursuant to
9 this Act.'

10 Further amend the bill in Part A in section 8 in that part
11 designated "~~§355.~~" in subsection 1 in the first paragraph in the
12 4th line (page 75, line 7 in L.D.) by striking out the following:
13 "chapter" and inserting in its place the following: 'Act' and in
14 the 8th line (page 75, line 11 in L.D.) by striking out the
15 following: "chapter" and inserting in its place the following:
16 'Act'

17 Further amend the bill in Part A in section 8 in that part
18 designated "~~§355.~~" by inserting at the end the following:

19 '13. Reimbursement. The fund must be used to reimburse
20 employers, insurers and group self-insurers for their payments of
21 compensation to employees under section 213, subsections 3 and 4.'

22 Further amend the bill in Part A in section 8 in that part
23 designated "~~§359.~~" in subsection 3 in the last line (page 81,
24 line 45 in L.D.) by inserting after the following: "workers" the
25 following: ', as well as any other data that is actuarially valid
26 and can be utilized to accomplish the purposes of this Act,
27 including rulemaking and recommending legislation'

28 Further amend the bill in Part A in section 9 in subsection
29 5 in the first paragraph by striking out all of the first
30 sentence (page 132, lines 30 to 32 in L.D.) and inserting in its
31 place the following:

32 'Except as provided in this section, all positions
33 authorized or allocated to the former Workers' Compensation
34 Commission are authorized or allocated to the Workers'
35 Compensation Board. Employees in classified positions on the
36 effective date of this Act shall continue in those positions
37 under the Workers' Compensation Board on the same terms and
38 conditions of employment subject to the Civil Service Law and
39 collective bargaining law.'

40 Further amend the bill in Part A in section 10 by striking
41 out all of subsection 1 and inserting in its place the following:

1. This Part applies to all matters in which an injury occurs on or after January 1, 1993. So as not to alter benefits for injuries incurred before January 1, 1993, for matters in which the injury occurred prior to that date, all the provisions of this Act apply, except that the Maine Revised Statutes, Title 39-A, sections 211, 212, 213, 214, 215, 221, 306 and 325 do not apply. With regard to matters in which the injury occurred prior to January 1, 1993, the applicable provisions of former Title 39 apply in place of Title 39-A, sections 211, 212, 213, 214, 215, 221, 306 and 325. The Workers' Compensation Board is authorized to and shall adopt rules governing the disposition of claims pending on January 1, 1993, in a manner that applies the applicable provisions of this Act to those claims to the maximum extent feasible.'

Further amend the bill in Part B in section 12 in that part designated "~~§2384-A.~~" in subsection 1 in the 4th line (page 146, line 23 in L.D.) by striking out the following: "lease" and inserting in its place the following: 'least'

Further amend the bill in Part B in section 12 in that part designated "~~§2386.~~" in subsection 10 in the last line (page 159, line 24 in L.D.) by inserting after the following: "duties." the following: 'Qualification to serve as a contractor for servicing carrier purposes is not limited to licensed insurance carriers.'

Further amend the bill in Part B in section 12 in that part designated "~~§2386.~~" in subsection 15 in the last line (page 160, line 16 in L.D.) by striking out the following: "\$1 million" and inserting in its place the following: '\$5,000,000'

Further amend the bill in Part B in section 12 in that part designated "~~§2386-A.~~" by inserting at the end the following:

'10. Insurer responsibility. Insurers authorized in 1993 or becoming authorized in 1993 or in subsequent years are not liable for deficits for any prior years except for any liability resulting from prior authorization to write workers' compensation insurance in this State.'

Further amend the bill in Part C in section 3 in that part designated "~~§3703.~~" by striking out all of subsections 4 to 6 and inserting in their place the following:

'4. Incorporation. The company must be incorporated pursuant to provisions of sections 3306 to 3309. Nine incorporators representing the 8 industry divisions established pursuant to section 3712, subsection 1, paragraphs A to H, plus one at-large member must be appointed by the Governor subject to review and approval by the joint standing committee of the

2 Legislature having jurisdiction over banking and insurance
4 matters. The Governor shall make the appointments within 10 days
6 after the effective date of this subsection. The joint standing
8 committee shall complete its review and vote on the approval of
the appointments of the Governor within 10 days of the Governor's
written notice of the appointments. If the designated committee
fails to act within the required 10 days, then the appointees put
forward by the Governor become the required incorporators.

10 An incorporator may not be a lobbyist required to be registered
12 with the Secretary of State, a service provider to the workers'
14 compensation system or a representative of a service provider to
the workers' compensation system.

16 Upon appointment, the incorporators shall execute a certificate
18 of organization as required by this Title and immediately pursue
a certificate of authority for a mutual assessment casualty
insurance company.

20 The incorporators shall appoint the initial 9 policyholder
22 members of the board of directors. One member of the board of
24 directors shall serve at large. Eight members of the board of
directors shall represent the 8 industry or geographic divisions.

26 5. Composition of the board. The board consists of up to
28 13 members. Nine members must be policyholders who purchase
30 workers' compensation coverage from the Maine Employers' Mutual
32 Insurance Company, except that the initial appointment may
34 include employers who have purchased coverage through the
36 workers' compensation residual market mechanism. Three members
38 must be persons who represent the public interest of the company
40 and must be appointed by the Governor within 30 days after a new
42 board member is authorized or a vacancy occurs, subject to review
44 and approval by the joint standing committee of the Legislature
46 having jurisdiction over banking and insurance matters. The
48 designated committee shall complete its review and vote on
approval of the appointments of the Governor within 15 days of
the Governor's written notice of appointment. If the designated
committee fails to act within the required 15 days, then the
appointees put forward by the Governor become the required board
members. Except for the initial selection of board members under
subsection 4, each division as established pursuant to section
3712 must have one member on the board. One member must be an
at-large policyholder member elected by the board. The remaining
board member is the president and chief executive officer who
shall serve on the board of directors while employed as president
and chief executive officer.

50 A member of the board who is not elected by one of the divisions
as specified in section 3712 may not be a lobbyist required to be

2 registered with the Secretary of State, a service provider to the
3 workers' compensation system or a representative of a service
4 provider to the workers' compensation system.

6 6. Terms. The initial terms of the board of directors are
7 staggered at 3 years, 2 years and one year. Of the initial
8 division policyholders, 3 serve 3-year terms, 3 serve 2-year
9 terms and 3 serve one-year terms. The initial public interest
10 members serve one 3-year term, one 2-year term and one one-year
11 term. A full term is 3 years. An individual may not serve more
12 than 2 full terms as a director. All members shall serve for the
13 terms provided and until their successors are appointed or
14 elected and qualified.'

16 Further amend the bill in Part C in section 3 in that part
17 designated "~~§3703.~~" by striking out all of subsection 9 (page
18 168, lines 43 to 50 in L.D.) and inserting in its place the
19 following:

20 '9. Nominating committee. The board shall create a
21 nominating committee. The nominating committee shall present to
22 the board nominees for the at-large policyholder board member
23 position.'

24 Further amend the bill in Part C in section 5 in that part
25 designated "~~§3704-A.~~" in the first paragraph in the 5th line
26 (page 169, line 12 in L.D.) by striking out the following:
27 "\$1,000,000" and inserting in its place the following:
28 '\$5,000,000'

30 Further amend the bill in Part C in section 8 in that part
31 designated "~~§3710.~~" in subsection 1 in the last line (page 172,
32 line 8 in L.D.) by inserting after the following: "~~expenses.~~"
33 the following: 'After consultation with the president and board,
34 the superintendent shall set the rates for the divisions for the
35 first year of operation of the company.'

38 Further amend the bill in Part C in section 8 in that part
39 designated "~~§3710.~~" in subsection 3 by striking out all of
40 paragraph A (page 172, lines 29 to 36 in L.D.) and inserting in
41 its place the following:

42 'A. The superintendent shall set the confidence level,
43 which is the probability that the provision of actual costs
44 will be less than the actual costs by a certain percentage,
45 for the company. The company shall establish its rates at a
46 level to cover its anticipated overhead expenses and to
47 cover, on a discounted basis, the actuarially determined
48 incurred claims and claim-settlement costs at not less than
49 the confidence level set by the superintendent.'
50

a. of 3.

SENATE AMENDMENT "1" to H.P. 1783, L.D. 2464

2 Further amend the bill in Part C in section 8 in that part
4 designated "~~§3710.~~" in subsection 3 in paragraph B in the last
6 line (page 172, line 42 in L.D.) by striking out the following:
'90% confidence level' and inserting in its place the following:
'confidence level set by the superintendent'

8 Further amend the bill in Part C in section 8 in that part
10 designated "~~§3712.~~" in subsection 4 by striking out all of
12 paragraph C (page 178, lines 6 to 8 in L.D.) and inserting in its
place the following:

14 'C. Each division governing board shall elect a chair, who
shall serve as the representative of the division on the
board of the company in accordance with the provisions of
section 3703. If the chair is unwilling or unable to serve
as the representative of the division on the board of the
company, the division governing board shall elect a member
to represent the division on the board of the company.'

20 Further amend the bill in Part C in section 8 in that part
22 designated "~~§3713.~~" in the first paragraph in the 9th line (page
179, line 17 in L.D.) by inserting after the following:
24 "provided" the following: 'and is not limited to licensed
insurance carriers'

26 Further amend the bill by striking out all of the fiscal
28 note and inserting in its place the following:

30 'FISCAL NOTE

32 1992-93

34 APPROPRIATIONS/ALLOCATIONS

36 Other Funds \$181,699

38 REVENUES

40 Other Funds \$181,699

42 This bill states that the balance of all funding
44 appropriated for the Workers' Compensation Commission for fiscal
46 year 1992-93 will be transferred to the newly established
Workers' Compensation Board, after all financial obligations of
48 the commission have been met. The new board will have
approximately \$2.1 million in Personal Services funding to cover
50 the last 6 months (January 1 to June 30) of fiscal year 1992-93
and will require no additional General Fund appropriation.
Beginning in fiscal year 1993-94, the board is authorized to

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2 raise up to \$6 million annually of dedicated revenues through the
assessment process. Whether this annual limit provides
4 sufficient future funding will depend on decisions made by the
board.

6 The board is authorized to employ temporary staff during
this time period, after which the board will receive legislative
8 authorizations for position counts and funding levels.

10 For future bienniums, the full funding of the board by the
assessment will result in net savings to the General Fund.
12 Currently, the Workers' Compensation Commission is entirely
funded by General Fund appropriation.

14 General Fund costs of the commission are partially offset by
16 an assessment made to workers' compensation insurers and
self-insured employers. In fiscal year 1992-93, the commission
18 had total General Fund appropriations of \$5,602,877 with the
assessment budgeted to generate \$2,362,632 of General Fund
20 revenue. Based on these figures, the net General Fund savings
will be approximately \$3.2 million per fiscal year.

22 As a further consequence of this bill, the Judicial
24 Department will have the discretionary authority to serve as a
final appeals step in disputed workers' compensation cases.
26 Given the relatively short time that will be left in fiscal year
1992-93, there will be no fiscal impact to the Judiciary in
28 fiscal year 1992-93. Beginning in fiscal year 1993-94, the
Judiciary may need an additional staff attorney position at a
30 total General Fund annual cost of \$35,100, if the total number of
appeals made to the Law Court increases.

32 The bill also affects the activities of the Public
34 Advocate. The Maine Revised Statutes, Title 24-A, section
2386-A, subsection 6 states that insurance carriers involved in a
36 residual market deficit proceeding shall pay a fee of \$20,000 to
cover the expenses incurred by the Public Advocate. The Office
38 of the Public Advocate does not feel that this \$20,000 fee will
be adequate to cover the typical expenses in such proceedings;
40 the actual costs are estimated to be about \$50,000. As of
January 1, 1993, the Public Advocate would no longer be involved
42 in any proceedings other than those concerning the residual
market deficit.

44 The new rating law and the expected increase in the number
46 of employers who choose to file as self-insurers will result in
additional expenses and staffing needs for the Bureau of
48 Insurance. The bureau will require an allocation of \$181,699 in
fiscal year 1992-93 for 5 additional positions, additional
50 actuarial contracting, the purchase of necessary computer
equipment and other operating expenses. Funding for these

2 expenses will require an increase in the statutory assessment cap
3 for the revenues collected by the Bureau of Insurance. For the
4 upcoming biennium, the bureau's needs will be approximately
5 \$305,000 in fiscal year 1993-94 and \$307,000 in fiscal year
6 1994-95.

7 The expedited review and confirmation by the Legislature of
8 appointments to the Workers' Compensation Board will increase
9 costs to the Legislature. These costs can be absorbed within
10 existing budgeted resources.

11 Finally, as reflected in the most recent actuarial estimate
12 contained in the August 31, 1992 report from the Blue Ribbon
13 Commission, this bill may result in a 12% savings in workers'
14 compensation costs to employers. Any projected savings will be
15 experienced by Maine State Government and municipalities across
16 the State. Based on recent worker compensation costs experienced
17 by agencies within Maine State Government, this 12% figure could
18 translate into General Fund savings for workers' compensation
19 costs of approximately \$600,000 annually.'

22 STATEMENT OF FACT

23 This amendment makes changes in the bill to reflect the
24 agreements of the Blue Ribbon Commission. It incorporates the
25 provisions of House Amendment "C" to the bill, filing number
26 H-1340, and more recent agreements of the Blue Ribbon Commission.
27

28 The following changes in this amendment are agreed to by the
29 Blue Ribbon Commission and were in House Amendment "C," filing
30 number H-1340.
31

32 1. It allows a lien on workers' compensation benefits for
33 general assistance payments by municipalities.
34

35 2. It provides an expedited process for review and
36 confirmation of Workers' Compensation Board members and revises
37 the language of the lobbyist exclusion. It changes the
38 legislative committee involved from the Joint Standing Committee
39 on Judiciary to the Joint Standing Committee on State and Local
40 Government.
41

42 3. It clarifies the rulemaking powers of the Workers'
43 Compensation Board and requires the adoption of rules on
44 confidentiality.
45

46 4. It provides that assistants to the general counsel serve
47 at the pleasure of the board and that general counsel and
48 assistants are not subject to the Civil Service Law.
49
50

2 5. It provides that bureau directors serve at the pleasure
of the board and that bureau directors and division directors and
4 their deputies and assistants are unclassified employees.

6 6. It updates the reference to the American Medical
Association impairment guidelines.

8
10 7. It specifies that, if an employee has received an
increase in pay from an employer that is paying compensation
under this Act, that employer or employer's insurer may
12 discontinue or reduce payments to the employee.

14 8. It distinguishes the procedures for discontinuing or
reducing benefits for employees when an order or award of
16 compensation or compensation scheme has been entered and when an
order or award of compensation has not been entered. It provides
18 an expedited procedure for all cases.

20 9. It clarifies that beginning July 1, 1994, the maximum
benefit level is the higher of \$441 or 90% of the state average
22 weekly wage as adjusted annually utilizing the state average
weekly wage as determined by the Bureau of Employment Security.

24 10. It provides an adjustment of the threshold for
determining the duration of partial incapacity benefits and the
26 application to employees injured between January 1, 1993 and
January 1, 1998.

30 11. It extends death benefits to dependents up to 18 years
of age.

32 12. It provides an exception to the rule that each party
34 pays the party's own attorney's fees if otherwise provided by
law, Maine Rules of Civil Procedure or rule of court.

36 13. It allows for the payment of attorney's fees by the
38 employee in other proceedings under the Maine Revised Statutes,
Title 39-A.

40 14. It amends the Employment Rehabilitation Fund provision
42 to make payments in accordance with this Act.

44 15. It amends the Employment Rehabilitation Fund to
authorize reimbursement for payments under Title 39-A, section
46 213.

48 16. It provides for additional monitoring of the costs,
utilization and performance of the workers' compensation system
50 by the Workers' Compensation Board.

2 17. It provides for the continued employment of current
4 employees of the Workers' Compensation Commission.

6 18. It specifies that the provision for the time for filing
8 petitions applies to injuries on or after January 1, 1993.

10 19. It corrects certain typographical errors in the bill.

12 20. It provides that servicing carriers in the residual
14 market need not be licensed insurance carriers.

16 21. It increases the amount the residual market mechanism
18 must make available as a loan to the Maine Employers' Mutual
20 Insurance Company as start-up money.

22 22. It exempts from liability for deficit under Fresh Start
24 insurers who come into the market in 1993 and after, unless they
26 have liability because of prior authorization in the market.

28 23. It provides the process for approval of incorporators
30 of the Maine Employers' Mutual Insurance Company and the same
32 disqualifications from service for incorporators as are provided
34 for members of the Workers' Compensation Board. It provides the
36 process for approval of the public members of the Board of the
38 Maine Employers' Mutual Insurance Company.

40 24. It requires that one member of the Board of Directors
42 of the Maine Employers' Mutual Insurance Company be an at-large
44 policyholder member, and it clarifies the appointment procedures.

46 25. It increases the amount that the Maine Employers'
48 Mutual Insurance Company may borrow as start-up money from the
residual market mechanism.

26. It requires the Superintendent of Insurance to set the
rates in the Maine Employers' Mutual Insurance Company for the
first year.

27. It allows the Superintendent of Insurance to set the
confidence level of the Maine Employers' Mutual Insurance Company.

28. It provides for representation of the division boards
on the Board of the Maine Employers' Mutual Insurance Company by
the chair or another member elected to do so.

29. It specifies that, within the Maine Employers' Mutual
Insurance Company, servicing carriers need not be agents.

SENATE AMENDMENT "D" to H.P. 1783, L.D. 2464

This amendment also makes the following additional changes agreed to by the Blue Ribbon Commission after the date of House Amendment "C," filing number H-1340.

1. It disqualifies service providers and representatives of service providers to the workers' compensation system from eligibility as members of the Workers' Compensation Board. It provides the same disqualifications within the Maine Employers' Mutual Insurance Company for the incorporators and board of directors who are not elected by one of the divisions as specified in the Maine Revised Statutes, Title 24-A, section 3712.

2. It changes the provisions on the board policy on confidentiality to require that the policy must make records available on a need-to-know basis only and must include legitimate research purposes while protecting individual confidentiality.

3. It requires the Workers' Compensation Board to collect and analyze data, studies and medical guidelines for occupational impairment to examine the feasibility and desirability of establishing an objectively ascertainable functional capacity standard to be used for determining eligibility for benefits under this Act consistent with Title 39-A, section 213, subsection 2.

4. It retains the provision from LD 2464 that precludes the issuance of insurance coverage by the workers' compensation insurance residual market mechanism after December 31, 1992. House Amendment "C" contained a provision that allowed a 2-month extension for the issuance of coverage by the residual market mechanism.

(Senator ESTY)
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