

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
118TH LEGISLATURE  
FIRST SPECIAL SESSION

HOUSE AMENDMENT "C" to COMMITTEE AMENDMENT "B" to S.P. 491, L.D. 1523, Bill, "An Act to Make the Workers' Compensation System More Equitable"

Amend the amendment by striking out all of section 4 and inserting in its place the following:

Sec. 4. 39-A MRSA §153-A is enacted to read:

§153-A. Advocate program

1. Advocate program established. The board shall establish an advocate program to provide assistance to certain employees and employers in resolving controversies under this Act. Qualified employees who proceed to mediation or formal hearing are entitled to representation by an advocate in any proceeding before the board and any required meeting with the employer. Qualified employers who proceed to formal hearing are entitled to representation by an advocate at the formal hearing or any required meeting with the employee if the employer has waived the right to counsel at the conclusion of mediation. The board shall ensure that employees and employers who are entitled to an advocate pursuant to this section are provided appropriate advocacy services.

2. Definitions. For the purposes of this section, the following terms have the following meanings:

A. "Qualified employee" means an employee who, with respect to an injury occurring on or after January 1, 1993, has participated in the troubleshooter program and has not informally resolved the dispute and has demonstrated to the board that legal counsel has not been retained.

2 B. "Qualified employers" means those employers who, with  
4 respect to a claim pending against them for an injury  
6 occurring on or after January 1, 1993, have waived their  
right to be represented by legal counsel at the conclusion  
of mediation.

8 C. "Legal counsel" means any person who has graduated from  
10 law school or who is admitted to the bar of any state.

12 3. Advocates. The executive director shall hire advocates  
14 under the authority of section 152, subsection 3 subject to the  
16 Civil Service Law, who must be qualified by experience and  
18 training and at least 5 of whom must be attorneys admitted to  
20 practice as an attorney in the courts of this State.

22 A. The minimum qualifications for employment as an advocate  
24 must include at least the following:

26 (1) A 6-year combination of appropriate experience,  
28 education and training in advocacy or dispute  
30 resolution;

32 (2) Knowledge of administrative, adjudicatory or  
34 workers' compensation laws, rules and procedures;

36 (3) Knowledge of legal documents, court procedures and  
38 rules of evidence; and

40 (4) Knowledge of medical and legal terminology and  
42 practices with respect to workers' compensation.

44 B. Only an advocate who is an attorney admitted to practice  
46 as an attorney in the courts of this State may represent  
48 qualified employees or qualified employers in any  
proceedings beyond mediation;

C. The board shall ensure that advocates receive  
appropriate and ongoing education and training.

D. An advocate may not represent before the board any  
insurer, self-insurer or 3rd-party administrator for a  
period of 2 years after terminating employment with the  
board.

4. Duties of advocates. Advocates have the following  
duties with respect to a qualified employee or qualified employer  
to whom the advocate is assigned:

2 A. Assisting in matters regarding workers' compensation  
claims, including negotiations;

4 B. Acting as an information resource on laws, decisions,  
rules, policies and procedures of the board;

6 C. Assisting and advocating to obtain appropriate benefits,  
8 rehabilitation, return to work and employment security  
services;

10 D. Assisting by meeting with or otherwise communicating  
12 with insurers, employers and health care and other  
authorized providers;

14 E. Assisting and advocating on behalf of qualified  
16 employees in mediation and following unsuccessful mediation  
or assisting and advocating on behalf of qualified employers  
18 following unsuccessful mediation; and

20 F. Maintaining confidentiality of information and  
22 communications with respect to the assistance and  
representation provided to qualified employees and qualified  
24 employers.

26 5. Legal advice to advocates. The board's general counsel  
shall assign a staff attorney as necessary to advise advocates on  
the preparation of cases at the formal hearing stage.

28 6. Implementation. The executive director shall establish  
30 policies to govern the management of the advocacy program and to  
32 ensure the program is implemented equitably and promptly. With  
respect to the rights and responsibilities of employers and  
34 employees under the advocate program, the executive director is  
authorized to adopt rules as necessary including rules to  
36 maintain the confidentiality of information provided to advocates  
and to prevent conflicts of interest of advocates. Rules adopted  
38 pursuant to this subsection are routine technical rules as  
defined in Title 5, chapter 375, subchapter II-A.'

40 Further amend the amendment in section 5 in subsection 6 in  
42 the 4th line (page 4, line 12 in amendment) by striking out the  
following: "\$6,600,000" and inserting in its place the following:  
44 '\$6,625,000' and in the 6th line (page 4, line 14 in amendment)  
by striking out the following: "\$6,600,000" and inserting in its  
46 place the following: '\$6,625,000'

48 Further amend the amendment by striking out all of section 9  
and inserting in its place the following:

'Sec. 9. Allocation. The following funds are allocated from  
Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
<b>WORKERS' COMPENSATION BOARD</b>		
<b>Administration- Workers' Compensation Board</b>		
Positions - Legislative Count	(10,000)	(10,000)
Personal Services	\$321,637	\$450,935
All Other	169,075	170,725
<b>TOTAL</b>	<b>\$490,712</b>	<b>\$621,660</b>

Allocates funds for 5 additional Senior Advocate positions at range 29, one additional Staff Attorney position, 2 additional Auditor positions, 2 additional Clerk Typist III positions, reclassification of 5 and 1/2 Advocate positions from range 22 to range 24 and operating costs necessary to administer new responsibilities under the Workers' Compensation Law.'

**FISCAL NOTE**

	1997-98	1998-99
<b>APPROPRIATIONS/ALLOCATIONS</b>		
Other Funds	\$18,635	\$21,660
<b>REVENUES</b>		
Other Funds	\$25,000	\$25,000

This amendment, establishing Senior Advocate positions at range 29 for the Workers' Compensation Board, will increase the

costs of the bill by \$18,635 and \$21,660 in fiscal years 1997-98  
and 1998-99, respectively. These increased costs will also  
require that the board's annual assessment cap be increased by  
another \$25,000.

The additional increase in the board's assessment cap will  
increase by minor amounts the State's costs as a self-insurer.

### SUMMARY

This amendment replaces the advocate program established in  
Committee Amendment "B" with the advocate program established in  
Committee Amendment "A" with the following modifications:

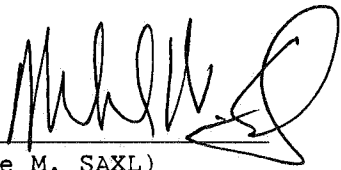
1. As in Committee Amendment "A," the advocates may  
represent both employers and employees;

2. At least 5 new advocates must be hired, all of whom must  
be attorneys; and

3. Only those advocates who are attorneys may represent an  
employer or employee in any proceeding beyond the mediation stage.

The amendment also increases the Workers' Compensation  
Board's assessment cap to account for the new attorney positions.

The amendment adds a new allocation to Committee Amendment  
"B".

SPONSORED BY:   
(Representative M. SAXL)

TOWN: Portland