

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)

Date: 1/8/8

Minority

(Filing No. H-641)

LABOR

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1275, Bill, "An Act To Promote Workplace Safety and Certainty within the Construction Industry by Authorizing the Workers' Compensation Board To Issue Construction Contractor Certificates"

Amend the bill by striking out all of section 1 and inserting the following:

'Sec. 1. 39-A MRSA §102, sub-§11, ¶A, as amended by PL 2007, c. 350, §1, is further amended to read:

A. "Employee" includes officials of the State and officials of counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment or in interstate or foreign commerce who are within the exclusive jurisdiction of admiralty law or the laws of the United States, except that this section may not be construed to exempt from the definition of "employee" a person who is employed by the State and is thereby barred by the State's sovereign immunity from bringing a claim against that person's employer under admiralty law or other laws of the United States for claims that are otherwise cognizable under this Act;

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire association as defined in Title 30-A, section 3151; volunteer emergency medical services persons as defined in Title 32, section 83, subsection 12; and police officers are employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services person, the average weekly wage must be taken to be the earning capacity of the injured employee in the occupation in which the employee is regularly engaged. Employers who hire workers within this State to

COMMITTEE AMENDMENT

1 work outside the State may agree with these workers that the remedies under this
2 Act are exclusive as regards injuries received outside this State arising out of and
3 in the course of that employment; and all contracts of hiring in this State, unless
4 otherwise specified, are presumed to include such an agreement. Any reference to
5 an employee who has been injured must, when the employee is dead, include the
6 employee's legal representatives, dependents and other persons to whom
7 compensation may be payable;

8 (3) Notwithstanding any other provisions of this Act, any charitable, religious,
9 educational or other nonprofit corporation that may be or may become an
10 assenting employer under this Act may cause any duly elected or appointed
11 executive officer to be an employee of the corporation by specifically including
12 the executive officer among those to whom the corporation secures payment of
13 compensation in conformity with chapter 5; and the executive officer must
14 remain an employee of the corporation under this Act while such payment is so
15 secured. With respect to any corporation that secures compensation by making a
16 contract of workers' compensation insurance, specific inclusion of the executive
17 officer in the contract causes the officer to be an employee of the corporation
18 under this Act;

19 (4) Except for persons engaged in harvesting of forest products, any person who,
20 in a written statement to the board, waives all the benefits and privileges provided
21 by the workers' compensation laws, provided that the board has found that person
22 to be a bona fide owner of at least 20% of the outstanding voting stock of the
23 corporation by which that person is employed or a shareholder of the professional
24 corporation by which that person is employed and that this waiver was not a
25 prerequisite condition to employment. For the purposes of this subparagraph, the
26 term "professional corporation" means a domestic or foreign professional
27 corporation as defined in Title 13, section 723.

28 Any person may revoke or rescind that person's waiver upon 30 days' written
29 notice to the board and that person's employer. The parent, spouse, domestic
30 partner as defined in Title 24, section 2319-A, subsection 1 or child of a person
31 who has made a waiver under the previous sentence may state, in writing, that the
32 parent, spouse, domestic partner as defined in Title 24, section 2319-A,
33 subsection 1 or child waives all the benefits and privileges provided by the
34 workers' compensation laws if the board finds that the waiver is not a prerequisite
35 condition to employment and if the parent, spouse, domestic partner as defined in
36 Title 24, section 2319-A, subsection 1 or child is employed by the same
37 corporation that employs the person who has made the first waiver;

38 (5) Except for persons engaged in harvesting of forest products, the parent,
39 spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or
40 child of a sole proprietor who is employed by that sole proprietor or the parent,
41 spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or
42 child of a partner who is employed by the partnership of that partner or the
43 parent, spouse, domestic partner as defined in Title 24, section 2319-A,
44 subsection 1 or child of a member of a limited liability company who is
45 employed by that limited liability company may state, in writing, that the parent,

- 1 spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or
2 child waives all the benefits and privileges provided by the workers'
3 compensation laws if the board finds that the waiver is not a prerequisite
4 condition to employment;
- 5 (6) Employees of an agricultural employer when harvesting 150 cords of wood
6 or less each year from farm wood lots, provided that the employer is covered
7 under an employer's liability insurance policy as required in subsection 17;
- 8 (7) An independent contractor;
- 9 (8) Except as otherwise provided in section 401 and section 105-A, if a person
10 employs an independent contractor, any employee of the independent contractor
11 is not considered an employee of that person for the purposes of this Act. The
12 person who employs an independent contractor is not responsible for providing
13 workers' compensation insurance covering the payment of compensation and
14 benefits to the employees of the independent contractor. An insurance company
15 may not charge a premium to any person for any employee excluded by this
16 subparagraph; or
- 17 (9) A state or municipal employee while the employee is on assignment as a
18 certified disaster service volunteer for the American Red Cross pursuant to Title
19 5, section 19-B or Title 30-A, section 2705. Duties performed while on a
20 volunteer disaster relief assignment for the American Red Cross may not be
21 considered a work assignment by a state agency or municipality.'

22 Amend the bill in section 3 in §105-A in subsection 2 in the first line (page 4, line 1
23 in L.D.) by striking out the following: "2008" and inserting the following: '2009'

24 Amend the bill by inserting after section 4 the following:

25 'Sec. 5. 39-A MRSA §154, sub-§6, ¶A, as enacted by PL 2007, c. 240, Pt. LL,
26 §1, is amended to read:

27 A. The assessments levied under this section may not be designed to produce more
28 than \$6,000,000 in revenues annually beginning in the 1995-96 fiscal year, more than
29 \$6,600,000 annually beginning in the 1997-98 fiscal year, more than \$6,735,000
30 beginning in the 1999-00 fiscal year, more than \$7,035,000 in the 2001-02 fiscal
31 year, more than \$6,860,000 beginning in the 2002-03 fiscal year, more than
32 \$8,390,000 beginning in the 2003-04 fiscal year, more than \$8,565,000 beginning in
33 the 2004-05 fiscal year, more than \$8,525,000 beginning in the 2005-06 fiscal year,
34 more than \$9,820,178 beginning in the 2007-08 fiscal year, more than ~~\$10,000,000~~
35 \$10,299,004 beginning in the 2008-09 fiscal year, more than ~~\$10,400,000~~
36 \$10,688,367 beginning in the 2009-10 fiscal year, more than ~~\$10,800,000~~
37 \$11,098,019 beginning in the 2010-11 fiscal year or more than ~~\$11,200,000~~
38 \$11,507,854 beginning in the 2011-12 fiscal year. Assessments collected that exceed
39 \$6,000,000 beginning in the 1995-96 fiscal year, \$6,600,000 beginning in the 1997-
40 98 fiscal year, \$6,735,000 beginning in the 1999-00 fiscal year, \$7,035,000 in fiscal
41 year 2001-02, \$6,860,000 beginning in the 2002-03 fiscal year, \$8,390,000 beginning
42 in the 2003-04 fiscal year, \$8,565,000 beginning in the 2004-05 fiscal year,

H. 903

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1275

1 \$8,525,000 beginning in the 2005-06 fiscal year, \$9,820,178 beginning in the 2007-
2 08 fiscal year, ~~\$10,000,000~~ \$10,299,004 beginning in the 2008-09 fiscal year,
3 ~~\$10,400,000~~ \$10,688,367 beginning in the 2009-10 fiscal year, ~~\$10,800,000~~
4 \$11,098,019 beginning in the 2010-11 fiscal year or ~~\$11,200,000~~ \$11,507,854
5 beginning in the 2011-12 fiscal year by a margin of more than 10% must be refunded
6 to those who paid the assessment. Any amount collected above the board's allocated
7 budget and within the 10% margin must be used to create a reserve of up to 1/4 of the
8 board's annual budget.'

9 Amend the bill by striking out all of section 5 and inserting the following:

10 'Sec. 5. Fee for application for construction contractor certificate. If the
11 Workers' Compensation Board determines that it must establish, through rulemaking
12 authorized pursuant to the Maine Revised Statutes, Title 39-A, section 105-A, subsection
13 11, a fee for processing applications for construction contractor certificates, the fee may
14 not exceed \$50 per application.

15 Sec. 6. Appropriations and allocations. The following appropriations and
16 allocations are made.

17 WORKERS' COMPENSATION BOARD

18 Administration - Workers' Compensation Board 0183

19 Initiative: Allocates funds for one Deputy Counsel position, one Abuse Investigator
20 position, one Management Analyst I position and one Administrative Assistant position
21 and related All Other associated with issuing a construction contractor certificate to
22 persons working in the construction industry who meet certain requirements.

23	OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
24	POSITIONS - LEGISLATIVE COUNT	0.000	4.000
25	Personal Services	\$0	\$304,004
26	All Other	\$0	\$40,000
27			
28	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$344,004

29
30 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
31 section number to read consecutively.

COMMITTEE AMENDMENT

1

SUMMARY

2 This amendment is the minority report of the Joint Standing Committee on Labor. It
3 increases the assessment cap for the Workers' Compensation Board Administrative Fund
4 to cover the costs of issuing a construction contractor certificate and also adds an
5 appropriations and allocations section.

6

FISCAL NOTE REQUIRED

7

(See attached)



123rd MAINE LEGISLATURE

LD 1275

LR 1257(02)

An Act To Promote Workplace Safety and Certainty within the Construction Industry by Authorizing the Workers' Compensation Board To Issue Construction Contractor Certificates

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Labor

Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$344,004	\$333,367	\$343,019
Revenue				
Other Special Revenue Funds	\$0	\$344,004	\$333,367	\$343,019

Fiscal Detail and Notes

This bill includes an Other Special Revenue Funds allocation of \$344,004 to the Workers' Compensation Board in fiscal year 2008-09 for 1 Deputy Counsel position, 1 Abuse Investigator position, 1 Management Analyst position and 1 Administrative Assistant position and related costs associated with issuing construction contractor certificates to persons working in the construction industry who meet certain requirements.

The Workers' Compensation Board estimates the revenue generated by the \$50 per applicant processing fee will be approximately \$45,000 per year. Since this revenue will not be sufficient to support the additional costs of this ongoing legislation and the Workers' Compensation Board will not be able to absorb the additional costs within existing resources, the Board will need to increase the assessment cap by \$299,004 in fiscal year 2008-09, \$288,367 in fiscal year 2009-10 and \$298,019 in fiscal year 2010-11.