

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1815

H.P. 1299

House of Representatives, March 9, 2010

**An Act To Clarify the Construction Subcontractor Status of the  
Maine Workers' Compensation Act of 1992**

(EMERGENCY)

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Reported by Representative TUTTLE of Sanford for the Joint Standing Committee on  
Labor pursuant to Public Law 2009, chapter 452, section 6.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

1           **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** in order to ensure a smooth transition for the predetermination of the  
4 employment status of construction subcontractors certain changes in the law must be put  
5 into effect as soon as possible; and

6           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
7 the meaning of the Constitution of Maine and require the following legislation as  
8 immediately necessary for the preservation of the public peace, health and safety; now,  
9 therefore,

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

11           **Sec. 1. 39-A MRSA §105,** as amended by PL 1993, c. 65, §1 and c. 120, §1 and  
12 affected by §6, is further amended to read:

13           **§105. Predetermination of independent contractor and construction subcontractor**  
14   **status**

15           **1. Predetermination permitted.** A worker, an employer or a workers'  
16 compensation insurance carrier, or any together, may apply to the board for a  
17 predetermination of whether the status of an individual worker, group of workers or a job  
18 classification associated with the employer is that of an employee or an independent  
19 contractor.

20           A. The predetermination by the board creates a rebuttable presumption that the  
21 determination is correct in any later claim for benefits under this Act.

22           B. Nothing in this section subsection requires a worker, an employer or a workers'  
23 compensation insurance carrier to request predetermination.

24           **1-A. Predetermination permitted for construction subcontractors.** A person, as  
25 defined in section 105-A, subsection 1, paragraph E, may apply to the board for a  
26 predetermination that the person performs construction work in a manner that would not  
27 make the person an employee of a hiring agent, as defined in section 105-A, subsection 1,  
28 paragraph D.

29           A. The predetermination issued by the board pursuant to this subsection is valid for  
30 one year and creates a rebuttable presumption that the determination is correct in any  
31 later claim for benefits under this Act.

32           B. Nothing in this subsection requires a person, as defined in section 105-A,  
33 subsection 1, paragraph E, a worker, an employer or a workers' compensation  
34 insurance carrier to request predetermination.

35           **2. Premium adjustment.** If it is determined that a predetermination does not  
36 withstand board or judicial scrutiny when raised in a subsequent workers' compensation  
37 claim, then, depending on the final outcome of that subsequent proceeding, either the  
38 workers' compensation insurance carrier shall return excess premium collected or the

1 employer shall remit premium subsequently due in order to put the parties in the same  
2 position as if the final outcome under the contested claim were predetermined correctly.

3 **3. Predetermination submission.** A party may submit, on forms approved by the  
4 board, a request for predetermination regarding the status of a person or job description as  
5 an employee, construction subcontractor, as defined in section 105-A, subsection 1,  
6 paragraph B, or independent contractor. The status requested by a party is deemed to  
7 have been approved if the board does not deny or take other appropriate action on the  
8 submission within 14 days.

9 **4. Hearing.** A hearing, if requested by a party within 10 days of the board's decision  
10 on a petition, must be conducted under the Maine Administrative Procedure Act.

11 **5. Certificate.** The board shall provide the petitioning party a certified copy of the  
12 decision regarding predetermination that is to be used as evidence at a later hearing on  
13 benefits.

14 **6. Rulemaking.** The board is authorized to adopt reasonable rules pursuant to the  
15 Maine Administrative Procedure Act to implement the intent of this section, which is to  
16 afford speedy and equitable predetermination of employee, construction subcontractor, as  
17 defined in section 105-A, subsection 1, paragraph B, and independent contractor status.

18 **Sec. 2. Implementation.** The Workers' Compensation Board shall implement the  
19 provisions of this Act by updating the predetermination application using existing  
20 departmental personnel and resources. The Workers' Compensation Board shall submit  
21 the predetermination application for review by the Joint Standing Committee on Labor by  
22 March 10, 2010.

23 **Sec. 3. Appropriations and allocations.** The following appropriations and  
24 allocations are made.

25 **WORKERS' COMPENSATION BOARD**

26 **Administration - Workers' Compensation Board 0183**

27 Initiative: Allocates funds to enhance enforcement of laws prohibiting the  
28 misclassification of workers by the Workers' Compensation Board Abuse Investigation  
29 Unit by providing a range change from 24 to 27 for 2 Workers' Compensation Specialist  
30 positions and reclassifying one Secretary Legal range 13 position to a Paralegal range 20  
31 position.

32

33	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
34	Personal Services	\$5,443	\$21,769
35			
36	<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$5,443</u>	<u>\$21,769</u>

37 **Emergency clause.** In view of the emergency cited in the preamble, this  
38 legislation takes effect when approved.





# 124th MAINE LEGISLATURE

LD 1815

LR 2627(01)

## An Act To Clarify the Construction Subcontractor Status of the Maine Workers' Compensation Act of 1992

Fiscal Note for Original Bill

Committee: Labor

Fiscal Note Required: Yes

### Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$5,443	\$21,769	\$22,439	\$23,131

#### Fiscal Detail and Notes

This bill includes Other Special Revenue Funds allocations of \$5,443 in fiscal year 2009-10 and \$21,769 in fiscal year 2010-11 for the Administration - Workers' Compensation Board program within the Worker's Compensation Board to fund the range changes for two Workers' Compensation Specialist positions and the reclassification of one Secretary Legal position to a Paralegal position in order to enhance the enforcement of laws prohibiting the misclassification of workers by the Workers' Compensation Board Abuse Investigation Unit.

Additional costs to the Workers' Compensation Board to update the predetermination application can be absorbed within existing budgeted resources.