

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1992

RESOLVES
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

Whereas, pursuant to Resolve 1991, chapter 50, a report was to be presented by November 1, 1991 with proposed legislation; and

Whereas, more time is required to develop properly a thorough public record and production of a comprehensive energy plan; and

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

Sec. 1. Resolve 1991, chapter 50, amended. Resolved: That Resolve 1991, Chapter 50, section 8 is amended to read:

Sec. 8. Report. Resolved: That the commission shall submit its report, which must be approved by 2/3 of the commission members, together with any necessary implementing legislation, to the Second Regular Session of the 115th Legislature and to the Joint Standing Committee on Utilities no later than ~~November 1, 1991~~ March 15, 1992.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective February 25, 1992.

CHAPTER 58

S.P. 815 - L.D. 2014

Resolve, to Direct the Department of Mental Health and Mental Retardation to Develop a Proposal to Improve Staff Retention in Community-based Programs Serving Persons with Mental Retardation

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

Whereas, the stability of the work force in community-based programs providing services to persons with mental retardation is critical to effectiveness of those programs in enabling those persons to maintain themselves in the community; and

Whereas, funding has been appropriated to improve staff retention in intermediate care facilities serving persons with mental retardation; and

Whereas, the wage scales in other community-based programs providing services to persons with men-

tal retardation are substantially lower than those in both intermediate care facilities and State Government for the same or equivalent jobs; and

Whereas, a serious staff retention problem therefore exists in many community-based programs providing services to persons with mental retardation, including day programs, supported employment programs, foster homes, boarding homes and supported living programs; and

Whereas, there is a need for immediate action to assess the nature and scope of these problems and to develop plans to address them; and

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

Department of Mental Health and Mental Retardation duties. Resolved: That the Department of Mental Health and Mental Retardation shall:

1. No later than October 1, 1992 develop a proposal to establish wage parity between community-based programs providing services to persons with mental retardation and state-run facilities and to implement any other measures necessary to improve staff retention and ensure the stability of state-funded community-based programs;

2. Report its recommendations to the joint standing committee of the Legislature having jurisdiction over human resource matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs no later than January 15, 1993; and

3. Consult with community-based programs in all phases of this process.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective March 23, 1992.

CHAPTER 59

H.P. 1696 - L.D. 2376

Resolve, to Establish a Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System

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

Whereas, the effectiveness of the workers' compensation system has become a divisive issue within the State; and

Whereas, the workers' compensation system can best be addressed by an impartial group concentrating on the subject; and

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

Sec. 1. Commission created and charged. Resolved: That the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System, in this resolve called the "commission," is established to make recommendations concerning replacement of the Workers' Compensation Act.

1. Goals of the system. The commission shall consider alternatives to the Workers' Compensation Act with the intent of reducing costs of delivery of all components of the system with predictable costs and benefits. The commission shall consider whether any options studied meet the goals of this State for a system of compensation for injured workers, including but not limited to the following:

- A. Timely provision of appropriate medical care for injured workers, utilizing efficient cost control and case management techniques;
- B. Timely provision of a fair level of indemnity benefits for injured workers;
- C. Emphasis on safe work sites, incentives for maintenance of safe work sites and disincentives for high workplace injury and illness rates;
- D. Encouragement of early return to work for injured workers, with the same or a new employer, with minimal barriers to return to work and minimal stigma, with prompt and effective employment rehabilitation and retraining; and
- E. Minimized need for representation and, for the situations that require it, effective and cost-efficient representation of employees and employers.

2. Consideration of alternatives. In examining alternatives to the Workers' Compensation Act, the commission shall consider, but is not limited to consideration of, the following:

A. The systems for the compensation of injured workers known to be operating successfully in the following jurisdictions:

- (1) Other states and the Canadian provinces;
- (2) Jurisdictions with workers' compensation institutes and entities that are state-chartered, nongovernmental, owned by employees and employers; and
- (3) Jurisdictions with mutual funds established to provide workers' compensation benefits;

B. The effect of significant changes in the present system, such as:

- (1) Systems that provide for dispute resolution between employers and employees through arbitration;
- (2) Coverage from a "cafeteria menu" of coverage negotiated between employer and employee;
- (3) Provision of continued employment benefits, including insurance and pension benefits, for injured workers and their families;
- (4) Twenty-four-hour medical coverage from medical insurance that provides benefits for employment-related injuries and illnesses and nonemployment-related injuries and illnesses;
- (5) Temporary disability programs obtained through payroll taxes; and
- (6) The effect on the injured worker and on the employer of the "exclusive remedy" aspect of workers' compensation laws.

3. Goals of the agency. The commission shall consider what type of regulatory or administrative agency is required to regulate or administer a system for the compensation of injured workers. The commission shall consider whether the agency meets the goals of this State for a system for the compensation of injured workers, including, but not limited to, the following:

- A. Prompt and accurate handling of undisputed claims for compensation;
- B. Encouragement of prompt agreements among injured workers and employers and minimization of the disputing and litigating of claims for compensation;

C. Provision of information required by employees and employers in a timely, helpful and skillful manner;

D. Case management, prompt and accurate disposition of disputed claims and a mechanism for appeal;

E. Coordination with the Occupational Safety and Health Administration and the Department of Labor in the prevention of work-related injuries and provision of incentives for workplace safety and disincentives for high workplace injury and illness rates; and

F. Cost-effective and accountable administration, including annual reports to the Legislature each January 1st on the costs and administration of the system for the compensation of injured workers.

4. Pilot project. The commission shall investigate the desirability and feasibility of the State becoming a site for a pilot workers' compensation reform program sponsored by the National Conference of State Legislatures and the Robert Wood Johnson Foundation.

The commission shall proceed with its work through committee meetings and the use of subcommittees. All meetings must be open to the public; and be it further

Sec. 2. Appointment and convening of the commission. Resolved: That the commission consists of 4 members who must be impartial and without any direct financial interests in the workers' compensation system. No member may be a Legislator. The members must be appointed in the following manner: The Governor shall choose 2 members, the President of the Senate shall choose one member and the Speaker of the House of Representatives shall choose one member. The Governor, the President of the Senate or the Speaker of the House of Representatives each has the power to veto the commission members chosen by the others. The Governor, the President of the Senate and the Speaker of the House of Representatives shall appoint the members of the commission by March 26, 1992. The Chair of the Legislative Council shall convene the first meeting of the commission no later than 14 days after the appointment of the commission. At the first meeting, the commission members shall elect a chair from among themselves; and be it further

Sec. 3. Report. Resolved: That the commission shall present the findings of the majority, together with legislation and a timetable for implementation, to the 115th Legislature by August 1, 1992. The reporting date may be extended for up to 30 days if a majority of the commission votes for an extension; and be it further

Sec. 4. Assistance. Resolved: That the commission may hire consultants or others to perform necessary work for the commission. If legislative staff assist-

ance is desired, assistance may be requested from the Legislative Council; and be it further

Sec. 5. Compensation. Resolved: That the members of the commission may be paid a reasonable compensation as unanimously agreed upon by the Governor, the President of the Senate and the Speaker of the House of Representatives. All members of the commission receive reimbursement for expenses upon application to the Executive Director of the Legislative Council. The executive director shall make a monthly report to the Legislative Council on the expenditures of the commission; and be it further

Sec. 6. Assessment. Resolved: That workers' compensation insurers and self-insured employers shall pay a one-time assessment to fund the commission.

1. Assessment on workers' compensation insurers. Every insurance company or association authorized to write workers' compensation insurance in this State shall, for the purpose of providing partial support of the commission, pay an assessment of not more than .057% on all gross direct premiums written during calendar year 1990, whether in cash or in notes absolutely payable on contracts written on risks located or resident in the State for workers' compensation insurance, less return premiums thereon and less all dividends paid to policyholders. For the purposes of this subsection, gross direct premiums do not include premiums attributable to municipalities or school administrative units.

2. Assessment on self-insured employers. Every self-insured employer approved pursuant to the Maine Revised Statutes, Title 39, section 23 except for municipalities, school administrative units and the State shall, for the purpose of providing partial support of the commission, pay an assessment in an amount not exceeding .14% of aggregate benefits paid during calendar year 1990 by each member pursuant to Title 39, section 23-A, subsection 4.

3. Assessment levied. The State Tax Assessor shall assess each insurance company or association and self-insured employer its pro rata share by April 15, 1992. Each insurance company or association and self-insured employer shall pay the assessment on or before May 15, 1992.

4. Insurance company or association collections. Insurance companies or associations shall bill and collect assessments under this resolve on insured employers on policies issued or renewed from July 1, 1992 through June 30, 1993. This assessment must be a separately stated amount 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.

5. Violations. Any insurance company, association or self-insured employer subject to this section that willfully fails to pay an assessment in accordance with

this resolve 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.

6. Deposit of funds. All revenues derived from assessments levied against insurance companies, associations and self-insured employers described in this resolve must be reported and paid to the Treasurer of State as undedicated revenue to the General Fund; and be it further

Sec. 7. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

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Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System

All Other \$250,000

Provides funds for the compensation and expenses of members, consultant costs and miscellaneous expenses of the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System. These funds may not lapse but must be carried forward from year to year to be expended for the same purpose.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective March 23, 1992.

CHAPTER 60

E.P. 1614 - L.D. 2275

Resolve, Concerning the Removal of Residential Underground Oil Tanks

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

Whereas, a substantial number of residents in the Bangor area have delayed removing residential underground oil tanks because the Department of Environmental Protection has made assurances that they would

develop a group contract to take advantage of economies of scale for their removal; and

Whereas, some of these residents are now in violation of the required removal schedule for nonconforming underground oil storage tanks; and

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

Sec. 1. Department of Environmental Protection to develop group contract. Resolved: That the Legislature directs the Department of Environmental Protection, Bureau of Hazardous Materials and Solid Waste Control to contract by July 1, 1992 for the removal of registered residential underground oil storage tanks for owners of privately-owned housing that was constructed by the United States military in the Bangor area in developments commonly known as the Bangor Gardens and Cape Hart. A property owner that objects to the contract may opt out. The Department of Environmental Protection shall pay the costs of tank removal from the Ground Water Oil Clean-up Fund and seek reimbursement from the property owners. The costs of tank removal must be apportioned equally among the participating property owners. The Department of Environmental Protection shall inform the residents of the availability of Maine State Housing Authority grants to pay the costs of removal for residents who meet income guidelines; and be it further

Sec. 2. Effect on certain provisions of Title 38 of the Maine Revised Statutes. Resolved: That persons that own registered underground oil storage tanks removed pursuant to this group contract are not subject to enforcement action by the Department of Environmental Protection for not meeting the removal schedule for those tanks as set forth in the Maine Revised Statutes, Title 38, section 568-A, subsection 1, paragraph B, subparagraph (1). Tanks removed pursuant to this group contract are deemed in compliance with section 563-A.

Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective March 24, 1992.

CHAPTER 61

H.P. 1611 - L.D. 2272

Resolve, to Authorize the Director of the Bureau of General Services to Condemn in the Name of the State Certain State-owned Land in the Town of Warren and the Town of Cushing and Exchange Boundary Line Agreements with Abutting Landowners