

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**

C. The salaries of the other subordinate officials and employees of the commission, other than those of the general counsel, the administrative director, the assistant administrative director, the director of finance, the director of technical analysis, the director of energy programs, the director of consumer assistance and the staff attorney and utility analyst positions, are subject to the Civil Service Law.

**Sec. 3. Appropriations and allocations.**

The following appropriations and allocations are made.

**PUBLIC UTILITIES  
COMMISSION**

**Conservation Administration  
Fund**

Initiative: Allocates funds for a Director of Energy Programs position, one Utility Analyst position and one Secretary position.

<b>Other Special Revenue Funds</b>	<b>2004-05</b>
Positions - Legislative Count	(3,000)
Personal Services	\$229,472
All Other	28,782
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Other Special Revenue	
Funds Total	\$258,254

See title page for effective date.

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**CHAPTER 607**

**S.P. 712 - L.D. 1866**

**An Act Relating to Storm Water  
Management**

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

**Sec. 1. 38 MRSA §420-D, sub-§7, ¶B**, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by Pt. C, §2 and PL 1997, c. 603, §8, is amended to read:

B. Disturbing areas for the purpose of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section. A manure storage facility that is designed, constructed, managed and maintained in accordance with the United States Department of Agriculture, Natural Resources Conservation Service guidelines does not require review pursuant to this section. For purposes of this para-

graph, "manure storage facility" means a facility used primarily for containing manure.

**Sec. 2. Storm water management rules.**

Notwithstanding the Maine Revised Statutes, Title 38, section 420-D, the Board of Environmental Protection shall provisionally adopt rules in accordance with Title 5, chapter 375 to regulate storm water management. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and must be provisionally adopted and submitted to the Legislature no later than January 2, 2005.

**Sec. 3. Legislation.** The Department of Environmental Protection shall submit a bill to the First Regular Session of the 122nd Legislature no later than January 2, 2005 to amend provisions in the Maine Revised Statutes, Title 38, section 420-D to resolve inconsistencies between the rules adopted pursuant to section 2 of this bill and that section.

See title page for effective date.

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**CHAPTER 608**

**S.P. 750 - L.D. 1909**

**An Act To Promote Decision Making  
Within the Workers' Compensation  
Board**

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

Whereas, waiting for the 90-day period to elapse would cause undue delay in the appointment of the Executive Director of the Workers' Compensation Board and the realignment of the board to enable a simple majority of the board to make decisions; and

Whereas, it would be detrimental to claimants and employers and would waste state resources to perpetuate unnecessarily an inefficient, and often deadlocked, administrative structure; 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 enacted by the People of the State of  
Maine as follows:**

**Sec. 1. 2 MRSA §6, sub-§1**, as amended by PL 2003, c. 469, Pt. A, §1, is further amended to read:

**1. Range 91.** The salaries of the following state officials and employees are within salary range 91:

- Commissioner of Transportation;
- Commissioner of Conservation;
- Commissioner of Administrative and Financial Services;
- Commissioner of Education;
- Commissioner of Environmental Protection;
- Executive Director of Dirigo Health;
- Commissioner of Human Services;
- Commissioner of Behavioral and Developmental Services;
- Commissioner of Public Safety;
- Commissioner of Professional and Financial Regulation;
- Commissioner of Labor;
- Commissioner of Agriculture, Food and Rural Resources;
- Commissioner of Inland Fisheries and Wildlife;
- Commissioner of Marine Resources;
- Commissioner of Corrections;
- Commissioner of Economic and Community Development; ~~and~~
- Commissioner of Defense, Veterans and Emergency Management; and
- Executive Director, Workers' Compensation Board.

**Sec. 2. 2 MRSA §6-E, sub-§1,** as enacted by PL 1993, c. 145, §1, is repealed.

**Sec. 3. 24-A MRSA §3706, sub-§2,** as amended by PL 1991, c. 885, Pt. D, §2, is further amended to read:

**2. Statistical and actuarial data.** The company ~~must~~ shall compile and maintain statistical and actuarial data related to the determination of proper premium rate levels, the incidence of work-related injuries, costs related to those injuries and any other data that the company considers desirable. The company ~~must~~ shall provide this data to the Superintendent of Insurance, the ~~Chair~~ Executive Director of the Workers' Compensation Board and the Department of Labor annually and upon request.

**Sec. 4. 39-A MRSA §102, sub-§5,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**5. Board; board member.** "Board" means the Workers' Compensation Board created by section 151 and includes a designee of the board. "Board member" means any member of the board, including the ~~chair~~ executive director.

**Sec. 5. 39-A MRSA §151, sub-§1,** as amended by PL 2003, c. 382, §1, is further amended to read:

**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~~ 7 members. The members of the board, including the executive director, 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 labor matters and confirmation by the Legislature. Notwithstanding the provisions of Title 3, section ~~154~~ 157, 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.

~~Four members of the board must be~~ The board consists of 3 representatives of management ~~and 4 members must be,~~ 3 representatives of labor and the executive director appointed pursuant to subsection 1-A. All management representatives must be appointed from a list provided by the Maine Chamber of Commerce and Industry or other bona fide organization or association of employers. All labor representatives must be from a list provided by the Executive Board of the Maine AFL-CIO or other bona fide labor organization or association of employees representing at least 10% of the Maine work force. Any list submitted to the Governor must have at least 4 times the number of names as there are vacancies for the group represented by the vacancies.

A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

A member of the board may not be a lobbyist required to be registered with the ~~Secretary of State~~ Commission on Governmental Ethics and Election Practices, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system.

Members of the board representing management and labor hold office for staggered terms of 4 years, commencing and expiring on February 1st, except for

~~the initial members of the board initial appointees and members appointed to fill unexpired terms. The terms of one member representing management and one member representing labor expire February 1st of each year. A member representing management or labor may not serve for more than 2 full terms.~~

~~The Governor shall initially designate one member representing management and one member representing labor for terms expiring February 1, 1994; one member representing management and one member representing labor for terms expiring February 1, 1995; one member representing management and one member representing labor for terms expiring February 1, 1996; and one member representing management and one member representing labor for terms expiring February 1, 1997.~~

**Sec. 6. 39-A MRSA §151, sub-§1-A** is enacted to read:

**1-A. Executive director.** The Governor shall appoint an executive director, who is the chair and chief executive officer of the board. The executive director serves at the pleasure of the Governor. Except as otherwise provided, the executive director shall, at the direction of the board, hire personnel as necessary to administer this Act, subject to the Civil Service Law.

**Sec. 7. 39-A MRSA §151, sub-§§2 and 3,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

**2. Removal.** Board members representing management and labor hold office for the terms provided, unless removed, and until their successors are appointed and qualified. They must be sworn and may be removed by the Governor for inefficiency, willful neglect of duty or malfeasance in office, but only with the review and concurrence of the joint standing committee of the Legislature having jurisdiction over state and local government labor matters upon hearing in executive session or by impeachment. Before removing a board member, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives of the removal and the reasons for the removal.

**3. Vacancies.** If a vacancy occurs during a term of a management or labor member, the Governor shall appoint a replacement to fill the unexpired part of the term. The replacement must be from the group represented by the member being replaced. In case the office of chair becomes vacant, the board member who has served for the longest period of time shall act as chair until the Governor makes an appointment to fill the vacancy.

**Sec. 8. 39-A MRSA §151, sub-§4,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is repealed.

**Sec. 9. 39-A MRSA §151, sub-§5,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. Decisions regarding the employment of an executive director and the appointment and retention of hearing officers require the affirmative votes of at least 2 board members representing management and at least 2 board members representing labor. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

**Sec. 10. 39-A MRSA §152, sub-§3,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is repealed.

**Sec. 11. 39-A MRSA §153-A, sub-§3,** as enacted by PL 1997, c. 486, §4, is amended to read:

**3. Advocates.** The executive director shall hire advocates under the authority of section ~~452~~ 151, subsection ~~3~~ 1-A, subject to the Civil Service Law, who must be qualified by experience and training.

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

- (1) A 6-year combination of appropriate experience, education and training in advocacy or dispute resolution;
- (2) Knowledge of administrative, adjudicatory or workers' compensation laws, rules and procedures;

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

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

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

C. 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.

**Sec. 12. 39-A MRSA §222, sub-§3, ¶B**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

B. The superintendent shall consult with the ~~chair~~ executive director of the board in formulating and adopting these rules.

**Sec. 13. 39-A MRSA §320**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

#### **§320. Review by full board**

Within 5 days ~~of~~ after issuing a decision, a hearing officer may request that the full board review a decision of the hearing officer if the decision involves an issue that is of significance to the operation of the workers' compensation system. There may be no such review of findings of fact made by a hearing officer.

If a hearing officer asks for review, the time for appeal to the Law Court pursuant to section 322 is stayed and no further action may be taken until a decision of the board has been made. If the board reviews a decision of a hearing officer, any appeal must be from the decision of the board. The time for appeal begins upon the board's issuance of a written decision on the merits of the case or written notice that the board denies review.

~~Upon the approval of a majority of the members of the board, the request for review may be granted. The board shall vote on whether to review the decision. If a majority of the board's membership fails to vote to grant review or the board fails to act within 60 days after receiving the initial request for review, the decision of the hearing officer stands. If the board votes to review the decision, the board may delegate responsibility for reviewing the decision of the hearing officer under this section to panels of board members consisting of equal numbers of representatives of labor and management. Review must be on the record and on written briefs only. Upon a majority vote of a majority of the board's membership, the board shall issue a written decision affirming, reversing or~~

modifying the hearing officer's decision. The written decision of the board must be filed with the board and mailed to the parties or their counsel. ~~The~~ If the board fails to adopt a decision by majority vote, the decision of the hearing officer stands if the result of the voting is less than a majority vote and is subject to direct appellate review in the same manner as if the board had not voted to review the decision.

**Sec. 14. Transition.** The incumbent Executive Director of the Workers' Compensation Board on the effective date of this Act shall serve until a successor is confirmed and takes office. The terms of the incumbent management representative and the incumbent labor representative who have served for the longest time on an acting basis conclude immediately upon the effective date of this Act. The other incumbent management and labor representatives shall remain in office until February 1, 2005, unless replaced sooner by the Governor. No later than August 31, 2004, the employer and labor organizations designated in the Maine Revised Statutes, Title 39-A, section 151, subsection 1 shall each submit lists of no fewer than 12 names to the Governor. From these lists, the Governor shall appoint 3 management representatives and 3 labor representatives to serve on the board. The terms of one management and one labor representative expire February 1, 2006. The terms of one management and one labor representative expire February 1, 2007. The terms of one management and one labor representative expire February 1, 2008.

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

Effective April 8, 2004.

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## CHAPTER 609

S.P. 747 - L.D. 1908

### An Act To Amend the Licensing Laws for Hearing Aid Dealers and Fitters

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

**Sec. 1. 32 MRSA §1658-A, sub-§2**, as amended by PL 2001, c. 323, §19, is further amended to read:

**2. License for business organization.** Any corporation, partnership, trust, association or other like organization engaged in the business of selling or offering for sale hearing aids at retail in the State shall apply to the board for a license to engage in that business. No business entity may so engage in the