

MAINE STATE LEGISLATURE

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*State Of Maine
120th Legislature*

Second Regular Session

Bill Summaries

*Joint Standing Committee
on
Labor*

May 2002

Members:

Sen. Betheda G. Edmonds, Chair

Sen. Karl W. Turner

Sen. W. Tom Sawyer, Jr.

Rep. George H. Bunker, Jr., Chair

Rep. Zachary E. Matthews

Rep. Deborah J. Hutton

Rep. Jacqueline R. Norton

Rep. William J. Smith

Rep. Frank J. Tarazewich

Rep. Russell P. Treadwell

Rep. Jay MacDougall

Rep. Gerald M. Davis

Rep. Philip Cressey, Jr.

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Maine State Legislature
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120th Legislature
Second Regular Session

Summary Of Legislation Before The Joint Standing Committees
May 2002

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing select committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. Also included are statistical summaries of bill activity this session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills considered by the committees. It is arranged alphabetically by committee name and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CON RES XXX	Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE	Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES	House & Senate disagree; bill died
DIED IN CONCURRENCE	One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT	Action incomplete when session ended; bill died
EMERGENCY	Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE	Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE	Bill failed to get majority vote
FAILED MANDATE ENACTMENT	Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY	Ruled out of order by the presiding officers; bill died
INDEF PP	Bill Indefinitely Postponed
ONTP	Ought Not To Pass report accepted
OTP ND	Committee report Ought To Pass In New Draft
OTP ND/NT	Committee report Ought To Pass In New Draft/New Title
P&S XXX	Chapter # of enacted Private & Special Law
PASSED	Joint Order passed in both bodies
PUBLIC XXX	Chapter # of enacted Public Law
RESOLVE XXX	Chapter # of finally passed Resolve
UNSIGNED	Bill held by Governor
VETO SUSTAINED	Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is July 25, 2002.

Patrick T. Norton, Interim Director
Offices located in Room 215 of the Cross Office Building

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be authorized to report out a bill to the First Regular Session of the 121st Legislature. This amendment proposed to add a fiscal note to the bill.

Senate Amendment "A" to Committee Amendment "A" (S-618) proposed that the portion of the employer contribution may not be less than the amount paid during the immediately preceding fiscal year. If the unfunded liability amount would be less than the amount paid in the immediately preceding year, the amendment proposed that the Board of Trustees of the Maine State Retirement System be directed to recommend a methodology to adjust plan funding in order to realize payment of the required amount. If no such methodology can be identified, then a General Fund appropriation in the amount of the difference between the General Fund portions of the unfunded liability payment in the 2 years in question must be sought. This amendment also proposed to remove the emergency preamble and clause.

Enacted law summary

Public Law 2001, chapter 707 requires the State to retire the unfunded liabilities of the Maine State Retirement System at a specific rate that is not less than the amount paid during the immediately preceding fiscal year. If the unfunded liability payment which is actuarially determined would be less than the amount paid in the immediately preceding year, the Board of Trustees of the Maine State Retirement System is directed to recommend a methodology to adjust plan funding in order to realize payment of the required amount; if no such methodology can be identified, then a General Fund appropriation in the amount of the difference between the General Fund portions of the unfunded liability payment in the 2 years in question must be sought.

Chapter 707 also establishes the Task Force to Study Methods of Addressing Inequities in the Retirement Benefits of State Employees and Teachers to study the impact of the changes made to the law that treat state employees and teachers who did not have 10 years of creditable service on July 1, 1993 less favorably than those with 10 years of creditable service before July 1, 1993. The Task Force is to report to the Labor Committee which is authorized to introduce legislation to the First Regular Session of the 121st Legislature.

LD 2202

An Act to Ensure that 25% of Workers' Compensation Cases with Permanent Impairment Remain Eligible for Duration-of-disability Benefits in Accordance With the Workers' Compensation Act

PUBLIC 712

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
KILKELLY	OTP-AM MAJ	S-623 KILKELLY
TREADWELL	OTP-AM MIN	

LD 2202 proposed to amend a provision in section 213 of the Workers' Compensation Act of 1992 that determines whether a person with permanent impairment from a work injury is entitled to receive benefits for the duration of his or her incapacity to work, or is subject to a durational limit, which is currently 7 years. A person is entitled to benefits for the duration of incapacity if his or her permanent impairment, expressed as a percentage of impairment to the whole body, exceeds a threshold percentage established by the Workers Compensation Board. The law requires the Board to set the threshold at a percentage level so that 25% of cases with permanent impairment fall above the threshold and 75% fall below.

The bill proposed to set clear standards for the Board to use in determining whether impairment resulting from prior injuries or conditions are taken into account in determining an individual's permanent impairment percentage and in setting the threshold.

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LD 2202 proposed that the determination of permanent impairment for the purposes of this law include impairment resulting from a prior injury or condition that is aggravated or accelerated by the current work injury, but does not include impairment from injuries or conditions that do not affect the same body part as the current work injury or are not medically affected by the current work injury. The bill proposed to overturn the decision of the Maine Supreme Judicial Court in Kotch v. American Protective Services, Inc. 2002 ME 19, which interpreted section 213 to permit inclusion of preexisting injuries or conditions that combine with the current work injury to create disability, even if the injuries and conditions are not aggravated or accelerated by the current work injury.

The bill proposed to make these changes applicable retroactively to all injuries occurring on or after January 1, 1993, including determinations made in pending proceedings.

Committee Amendment “A” (S-574), which was not adopted, was the majority report of the Joint Standing Committee on Labor and proposed to replace the bill. It proposed to overturn the decision in Kotch v. American Protective Services, Inc. by specifying that a permanent impairment evaluation to determine an employee's entitlement to benefits for the duration of the employee's incapacity may not include nonwork-related conditions that merely combine with the current work injury without being caused, aggravated or accelerated by the work injury.

The amendment also proposed to adopt 10 years as the duration for partial benefits for employees whose impairments are below the permanent impairment threshold of 11.8%. It proposed to fix the threshold at 11.8% and repeal the adjustment mechanisms for changing both the threshold and the duration of partial benefits for those below the threshold.

The amendment proposed to change administrative provisions relating to the Workers' Compensation Board. It proposed to give the Executive Director of the board greater authority to manage the staff and finances of the board. It proposed that the Executive Director, General Counsel, hearing officers and most other staff be removable only for cause, and to require a vote of 3/4 of members of the board to remove the executive director.

Committee Amendment “B” (S-575), the minority report of the Joint Standing Committee on Labor, proposed to add a fiscal note to the bill. It was not adopted.

House Amendment "A" (H-1101) proposed to replace the bill. It proposed that the determination of permanent impairment for purposes of section 213 of the Workers' Compensation Act must include the work injury at issue as well as other work injuries that combine with the work injury at issue and contribute to the incapacity. Like the bill, it also proposed to include permanent impairment arising from other preexisting conditions and injury if those conditions or injuries are aggravated or accelerated by the work injury at issue. The amendment proposed to make these changes retroactive to injuries on or after January 1, 1993. It was not adopted.

Senate Amendment "A" to House Amendment “A” (S-609), which was not adopted, proposed to amend House Amendment “A” to provide a delayed effective date for the provision including prior work injuries that are not aggravated or accelerated by the current work injury, but that combine with the injury and contribute to incapacity to work. It proposed to provide that such injuries may be included only in determining an individual's permanent impairment for injuries on or after January 1, 2004, and only if the employee received a benefit for the prior injury under the Maine Workers' Compensation Act of 1992 but for which a lifetime lump sum has not already been paid. It also proposed that such injuries would not be included unless the Workers' Compensation Board adjusted the threshold effective January 1, 2004 in a way that takes into account the inclusion of such injuries. The amendment also proposed that the Workers' Compensation Board report the appropriate adjustment to the joint standing

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committee of the Legislature having jurisdiction over labor matters by January 2, 2004 and indicate whether the necessary adjustment has been made.

Senate Amendment "B" to House Amendment "A" (S-622), which was not adopted, proposed to amend House Amendment "A" to allow inclusion of prior work injuries that are not aggravated or accelerated by the current work injury beginning with injuries on or after January 1, 2002, as long as the prior work injury was verifiable and resulted in benefits being paid to the worker under workers' compensation law in Maine or another state. Injuries for which a lump sum settlement was made are not included if the permanent impairment percentage from the injury exceeded the applicable threshold.

It also proposed that the Workers' Compensation Board hire 2 actuaries to develop recommendations on how the permanent impairment threshold should be adjusted to reflect the inclusion of those prior injuries and conditions and that, if the board failed to make the required adjustment by November 1, 2002, the matter must be referred to an arbitrator for resolution.

Senate Amendment "C" (S-623) proposed to replace the bill. It proposed that permanent impairment, for purposes of section 213, includes (1) impairment resulting from prior injuries and physical conditions that are aggravated or accelerated by the work injury at issue; and (2) for injuries on or after January 1, 2002, impairment resulting from prior work injuries combine with the current injury and contribute to the incapacity, provided the worker received a benefit or compensation under the Maine Workers' Compensation Act of 1992. It does not include (1) impairment from nonwork injuries that are not aggravated or accelerated by the current injury or (2) injuries for which a lump sum settlement was paid to a worker whose impairment percentage exceeded the applicable threshold.

The amendment also proposed to direct the Workers' Compensation Board to hire 2 actuaries to develop recommendations on how the permanent impairment threshold should be adjusted and proposed that, if the board fails to make the required adjustment by November 1, 2002, the matter must be referred to an arbitrator for resolution. Finally, the amendment proposed to make the changes contained in this bill retroactive to injuries on or after January 1, 1993, with exceptions for already-resolved cases.

Enacted law summary

Public Law 2001, chapter 712 amends the Workers' Compensation Act of 1992 to provide specific rules for determining the degree of an injured worker's permanent impairment, for purposes of determining whether the worker is entitled to benefits for the duration of disability. The law provides that the permanent impairment calculation includes impairment from (1) the current work injury; (2) other injuries or physical conditions that are aggravated or accelerated by the current work injury; and (3) for injuries occurring on or after January 1, 2003, prior work injuries that contribute to the employee's disability, if the worker received a benefit for that prior work injury under the Maine Workers' Compensation Act of 1992, the prior injury was not found to be ineligible under that Act, and the worker did not receive a lifetime lump sum settlement for that injury. The rules apply to permanent impairment determinations for injuries occurring on or after January 1, 1993, but it does not change any determination that was made and finalized before the effective date of the new law. Chapter 712 also assists the Workers Compensation Board in revising the threshold for determining eligibility for duration-of-disability benefits by requiring the Board to hire actuaries and to submit the issue to arbitration if the board is unable to adjust the threshold.