

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

(3) Notwithstanding any other provisions of this Act, any charitable, religious, educational or other nonprofit corporation that may be or may become an assenting employer under this Act may cause any duly elected or appointed executive officer to be an employee of the corporation by specifically including the executive officer among those to whom the corporation secures payment of compensation in conformity with chapter 5; and the executive officer must remain an employee of the corporation under this Act while such payment is so secured. With respect

to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract causes the officer to be an employee of the corporation under this Act;

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

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

(5) Except for persons engaged in harvesting of forest products, the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a partner who is employed by the partnership of that partner or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a member of a limited liability company who is employed by that limited liability company may state, in writing, that the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 17;

(7) An independent contractor;

(8) Except as otherwise provided in section 401 and section 105-A, if a person employs an independent contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. An insurance company may not charge a premium to any person for any employee excluded by this subparagraph; or

(9) A state or municipal employee while the employee is on assignment as a certified disaster service volunteer for the American Red Cross pursuant to Title 5, section 19-B or Title 30-A, section 2705. Duties performed while on a volunteer disaster relief assignment for the American Red Cross may not be considered a work assignment by a state agency or municipality.

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

Amend the bill by inserting after section 4 the following:

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

A. The assessments levied under this section may not be designed to produce more than \$6,000,000 in revenues annually beginning in the 1995-96 fiscal year, more than \$6,600,000 annually beginning in the 1997-98 fiscal year, more than \$6,735,000 beginning in the 1999-00 fiscal year, more than \$7,035,000 in the 2001-02 fiscal year, more than \$6,860,000 beginning in the 2002-03 fiscal year, more than \$8,390,000 beginning in the 2003-04 fiscal year, more than \$8,565,000 beginning in the 2004-05 fiscal year, more than \$8,525,000 beginning in the 2005-06 fiscal year, more than \$9,820,178 beginning in the 2007-08 fiscal year, more than ~~\$10,000,000~~\$10,299,004 beginning in the 2008-09 fiscal year, more than ~~\$10,400,000~~\$10,688,367 beginning in the 2009-10 fiscal year, more than ~~\$10,800,000~~\$11,098,019 beginning in the 2010-11 fiscal year or more than ~~\$11,200,000~~\$11,507,854 beginning in the 2011-12 fiscal year. Assessments collected that exceed \$6,000,000 beginning in the 1995-96 fiscal year, \$6,600,000 beginning in the 1997-98 fiscal year, \$6,735,000 beginning in the 1999-00 fiscal year, \$7,035,000 in fiscal year 2001-02, \$6,860,000 beginning in the 2002-03 fiscal year, \$8,390,000 beginning in the 2003-04 fiscal year, \$8,565,000 beginning in the 2004-05 fiscal year, \$8,525,000 beginning in the 2005-06 fiscal year, \$9,820,178 beginning in the 2007-08 fiscal year, ~~\$10,000,000~~\$10,299,004 beginning in the 2008-09 fiscal year, ~~\$10,400,000~~\$10,688,367 beginning in the 2009-10 fiscal year, ~~\$10,800,000~~\$11,098,019 beginning in the 2010-11 fiscal year or ~~\$11,200,000~~\$11,507,854 beginning in the 2011-12 fiscal year by a margin of more than 10% must be refunded to those who paid the assessment. Any amount collected above the board's allocated budget and within the 10% margin must be used to create a reserve of up to 1/4 of the board's annual budget.'

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

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

**Sec. 6. Appropriations and allocations.** The following appropriations and allocations are made.

**WORKERS' COMPENSATION BOARD**

**Administration - Workers' Compensation Board 0183**

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

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2007-08</b>	<b>2008-09</b>
POSITIONS - LEGISLATIVE COUNT	0.000	4.000
Personal Services	\$0	\$304,004
All Other	\$0	\$40,000
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<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$344,004</b>

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

**SUMMARY**

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

**FISCAL NOTE REQUIRED**  
(See attached)