

**STATE OF MAINE
121st LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the
COMMISSION TO REVIEW THE
BUDGET PROCESS OF THE
WORKERS' COMPENSATION BOARD**

February 2004

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Executive Summary

The Commission to Review the Budget Process of the Workers' Compensation Board was created by Public Law 2003, chapter 425, section 3. The Commission, composed of 4 legislators and 2 members of the Workers' Compensation Board, was directed to review the process used by the Board to establish, approve and monitor its budget. The Commission was also specifically directed to review the Board's progress in making changes recommended in recent reports on the business processes.

Commission members met 4 times between August, 2003 and December 2003, and received informational briefings on how the Board develops its budget, how it assesses insurers and employers to fund Board activities, and how the Legislature and the Bureau of the Budget (Department of Administrative and Financial Services) play roles in reviewing and approving the Board's budget. Workers' Compensation Board staff also described steps taken by the Board in response to recommendations of the 2001 Berry Dunn McNeil and Parker study of Workers' Compensation Board governance.

The Commission did not make any formal findings or recommendations. However, members reached consensus on the following issues.

A. Budget Development within the Workers' Compensation Board

Commission members agree that the Board has taken steps to improve internal and external accountability for its budget by (1) allocating expenses to specific activities, or "cost centers" and (2) by creating performance standards or benchmarks. The Commission urged the Board to continue monitoring costs and developing benchmarks, especially through its revision of the Board's business plan.

Oversight of the budget process and budgeting results by the Legislature is an important part of accountability to the public. The Joint Standing Committee on Labor is directed by statute to review the Board's budget, but has not always done so at the time of the biennial budget request. The Commission urges the Labor Committee to meet that responsibility more rigorously, and urges the Board and its Executive Director to develop a more understandable way to present budget information to the Legislature as well as a way to seek input in development of the budget.

B. Revenue Stream

Although the current method of collecting revenue for Board operations (an assessment of insurers and self-insuring employers and groups) is somewhat unpredictable and generally results in collection of more revenue than anticipated, it appears to members of the Commission that the current law is adequate for the needs of the Board, especially with the availability of the reserve fund to cover cash flow problems.

Other methods of collecting revenue have advantages and disadvantages over the current system. However, no consensus emerged from commission discussion that the current system needed to be changed. The Commissioner of Professional and Financial Regulation urged the Commission to change the assessment process. He submitted proposed legislation to alter the method of assessment, but the proposal was not provided in time for the Commission members to discuss it. That proposal is included in Appendix H without a recommendation from the Commission.

I. Introduction

The Commission to Review the Budget Process of the Workers' Compensation Board was created by Public Law 2003, chapter 425, section 3. The Commission was composed of 6 members – 2 Senators, 2 members of the House of Representatives and 2 members of the Workers' Compensation Board, one representing the Board's labor members and one representing its management members.

The Commission was directed to review the process used by the Workers' Compensation Board to establish, approve and monitor its budget and to determine whether improvements are needed. The Commission was also directed to review the Board's progress on implementing budget-related recommendations resulting from 2 recent studies of Board administration and governance: the 1997 Coopers and Lybrand study¹ and the 2001 Berry, Dunn, McNeil and Parker (BDMP) study.²

The Commission met 4 times during the interim between the 1st and 2nd Regular Sessions of the 121st Legislature – August 20, October 6, November 3 and November 17, 2003.

At its first meeting, the Commission received information on the role of the Workers' Compensation Board, the Bureau of the Budget and the Legislature in developing and reviewing the Board's budget. The Commission also heard a presentation from the Workers' Compensation Board staff regarding the progress of the Board in implementing recommendations of the BDMP report.

At its 2nd meeting, Commission members focused on the process used within the Board to predict future expenditures and future revenue from the Board's assessment on insurers and self-insurers, and the process for bringing expenditures in line with projected revenues. The Commission also discussed the Board's use of "performance measures" to increase accountability.

At its 3rd meeting, the Commission looked at how other states fund their workers' compensation administrative agencies, especially at their processes for collecting revenue through assessments. The Commission reviewed the Board's Long Term Business Plan and the Board's progress in meeting the goals of that plan. Commission members discussed the level of Board expenditures and the allocation of Board resources among its various programs.

At their final meeting, Commission members discussed the concept of applying additional benchmarks in the audit program, e.g., examining the frequency with which insurers or employers contest the payment of benefits to an employee. The members also had additional discussions on the allocation of Board resources. Finally, members reviewed a list of issues and summed up their

¹ Workers' Compensation Board Business Assessment, prepared by Coopers and Lybrand Consulting (December 1997)

² Report of the Workers' Compensation Board Governance Study, performed by Berry Dunn McNeil and Parker under contract to the Department of Administrative and Financial Services pursuant to PL 2001 chapter 49 (December 2001)

conclusions. No formal recommendations or findings were voted upon by the Commission, but a summary of consensus items as well as areas of disagreement is included as Part III of the report.

II. Background

A. Budget Development, Review And Approval -- The Process

The Workers' Compensation Board is an independent board within State Government, funded by a dedicated account known as the "Workers' Compensation Board 3 The Administrative Fund is composed primarily of money collected through an assessment on workers' compensation insurers and self-insured employers and employer groups. In order to spend money from that dedicated account, the Board must submit a budget and receive permission from the Legislature and the Governor to make expenditures. That permission comes in the form of an "allocation" that is generally included in legislation enacted in the Legislature and signed by the Governor.³

The Workers' Compensation Board budget goes through several steps before an allocation request to fund the budget is submitted to the Legislature.

1. Workers' Compensation Board Develops Budget

First, the Board must estimate the amount of funds needed to cover the current level of services and any new programs for the next 2 fiscal years. Approximately 80% of the Board's budget is spent on salaries and benefits for staff. The rest is spent on capital expenses and all other expenses, such as rent, equipment and supplies. Once the total need is calculated, the Board must ensure that it will have sufficient revenue to cover the costs. If anticipated expenditures are likely to exceed anticipated revenue, the Board must review and reduce its budget so that revenues and expenditures match.⁴

2. Bureau of the Budget Reviews; Governor Decision

The Board then submits its proposed budget to the Bureau of the Budget, within the Department of Administrative and Financial Services. As it does with other self-funded agencies (e.g., the Public Utilities Commission), the Bureau of the Budget reviews the Board's proposal primarily for the purpose of ensuring that the expenditure plan can be supported by sufficient revenue. If the Bureau of the Budget concludes that sufficient revenues will be available to meet the budget, the budget is then submitted to the Governor, for review and inclusion in the Governor's biennial budget legislation presented to the Legislature in the beginning of each biennium. Although the Governor has authority to revise the Board's

³ The other way for the Board to obtain an allocation is through the Financial Order process described later in this report.

⁴ Appendix D contains a more detailed description of the budget development process for the 2004-05 fiscal biennium, which required moving some of the expenses into a separate bill that contained an increased assessment cap.

budget before including it in his bill⁶, the Governor generally submits the proposal as he receives it from the Bureau of the Budget

3. Legislature Reviews and Approves Allocation

The Governor's biennial budget bill is referred to the Joint Standing Committee on Appropriations and Financial Affairs for review. However, since the Board does not receive General Fund dollars, that committee does not generally conduct a public hearing on the proposed allocation to the Board. The Joint Standing Committee on Labor is directed by Title 3, section 522-B to review the Board's budget and make a written recommendation to the Appropriations Committee. In recent years, the Labor Committee has heard budget presentations from the Board on various occasions, but the presentations are not always a regular part of the biennial budget review process.

Once the Legislature approves the Board's allocation, the Board has authority to spend up to the amount of the allocation. Without an allocation, the Board may not spend funds even if the funds are in the Board's hands. Unlike most state agency legislative allocation is not broken down into specific programs, such as worker advocate, general office administration, etc. It is simply broken down into 3 categories – Personal Services, Capital and All Other. This form of allocation gives the Board flexibility to move staff and funds among programs as needed without having to seek legislative approval. The Board does, however, need approval to move funds among the 3 categories of expenditures.

B. Budget Development, Approval and Monitoring – Issues

Commission members raised a number of concerns about the budgeting process during this interim study, some of which were highlighted in the 2001 Berry Dunn McNeil and Parker (BDMP) report. Those issues included:

- The insufficiency of budget information provided to Board members
- The lack of accountability for expenditures
- The sufficiency of Legislative review of the budget
- The relationship between the Board and the Bureau of the Budget

The BDMP report found that the “fiscal reports reviewed by the Board are not sufficient to enable the Board members to evaluate management or overall fiscal performance⁷.” Among other things, the report recommended that Board members increase the level of financial detail they evaluate and that members conduct more frequent reviews of Board finances.

⁶ Title 5, section 1666.

⁷ BDMP Report, page 16

1. Cost Center Reporting

The Workers Compensation Board staff reported to the Commission that the Board has recently made 2 significant changes in its accounting and financial management, partly in response to the BDMP report. First, the Board now tracks and reviews spending on the basis of 5 “cost centers” (1) Board Central Office and Administration; (2) The Worker Advocate program; (3) Monitoring, Auditing and Enforcement; (4) Dispute Resolution (including costs of the regional offices); and (5) Computer Services. Allocation of staff positions and funding to the various cost centers will improve the Board’s understanding of program expenses, trends in spending, and needs within and among programs. The Board allows the Executive Director to move funds around within each cost center, but a shift of funds from one cost center to another would require approval of the Board.

The Board provided examples of cost center reporting to Commission members, and members agreed that the cost center approach improves communication and understanding about expenditures. Appendix E provides an example of cost center budgeting.

2. Performance Measures

The second significant change adopted by the Board was development of “performance measures,” to help the Board evaluate the effectiveness and efficiency of programs. Paul Dionne, Executive Director of the Board, explained that he is in the process of developing a new business plan for the Board that will include performance measures or standard operating procedures for each cost center. Commission members expressed approval of the Board’s use of performance measures, and some urged the Board to expand the use of objective criteria in evaluating performance of staff and management. Executive Director Dionne provided the Commission with a draft of the 2004 Long-Term Business Plan, which the Board will address at future meetings. Executive Director Dionne was asked to provide legislators with a copy of the final plan.

3. Legislative Review

Legislative review of the Board’s budget may be easier in the future. Some members felt that Commission meetings had helped them gain a better understanding of the Board’s budgeting and revenue processes. In addition, the use of cost center reporting will provide information in a clearer format and performance measures will provide additional information.

The Commission urged the Board to involve the Legislature’s Labor Committee early in the process of developing a budget, and to ensure that Board members representing labor and management are available to answer committee questions. Executive Director Dionne suggested that one way to inform the Labor Committee early in the process might be for the Board to brief the committee in January,

which is the middle of a fiscal year, on Board expenditures to date and to get committee input for future fiscal year spending.

C. Current Law on Funding the Board

The Workers' Compensation Board is a self-funded agency; it is not supported by the state's General Fund. Instead, it is primarily funded by an assessment on workers' compensation insurers and self-insured employers and employer groups. Other sources of revenue consist of investment income,⁸ fines,⁹ and sales of publications.

1. Calculation of the Assessment¹⁰

To begin the assessment process for a fiscal year, the Workers' Compensation Board first determines the total amount to be collected by assessment. That number is governed by two factors.

First, the assessment target may not exceed the statutory "cap" set forth in Title 39-A, section 154, subsection 6.¹¹ This is not quite as straightforward as taking the dollar amount from the statute. The law requires the Board to assess an amount lower than the statutory figure if, in the prior year, assessment collections exceeded the prior year's statutory dollar amount. In some years, the maximum target assessment calculated under the statutory formula is significantly less than the dollar amount set forth in statute.¹² Second, the Board looks at its planned budget, and determines what amount must be collected by assessment after subtracting anticipated revenue from other sources.

Once the aggregate assessment is determined, the Board divides the total between insurers and self-insurers, based on the proportion of disabling cases attributable to each group in the most recently completed calendar year.¹³

The total to be collected from self-insured employers and employer groups is divided among the employers and groups, based on the proportion of aggregate

⁸ Investment income to the Board has dropped from \$339,893 in FY 99 and \$352,742 in FY 00 to \$155,959 in FY '02

⁹ Not all fines go to the Administrative Fund. Most are deposited in the General Fund pursuant to Title 39-A, section 360 (penalties for violation of reporting requirements, willful violations of the Act, fraud or intentional misrepresentation). Most fines for late payment of incapacity benefits go to the injured employee pursuant to section 205 and 324. Fines for employers operating without mandatory workers' compensation insurance go to the Employment Rehabilitation Fund under section 324.

¹⁰ Further detail about the calculation of the assessment for FY 2004 can be found in the Appendix

¹¹ That cap was set at \$6 million for FY96, and was increased to \$6.6 million by Public Law 1997, c. 486; to \$6.735 by PL 1999, c. 359; to \$6.860 million by PL 2001, c. 692; and to \$8.39 in FY 04, \$8.565m in FY 05, and \$8.525m after FY05 by PL 2003, c. 425. The cap was increased temporarily by \$300,000 by PL 2001, c. 393. Some of the increases were attributable to additional programs. For example, PL 1997, c. 486 created the Worker Advocate and MAE programs and increased the cap by \$600,000.

¹² For example, for fiscal year '01, the statutory dollar limit was \$6.735 million, but after reduction for the prior year's excess collection, the assessment was limited to \$5 million

¹³ Title 39-A, section 154, subsection 5

benefits paid by each employer or group. Self-insurer assessments must be sent to the Board by June 1 to fund the fiscal year beginning July 1.

Insurers are not given a specific dollar amount to remit to the Board.¹⁴ They are directed to add to each premium bill sent to insureds a specific percentage of premium for payment to the Board. The surcharge is separately stated on the premium invoice. The Board must estimate what percentage, when applied to premiums, will result in the dollar amount targeted to be collected from insurers. The Bureau of Insurance assists the Board in estimating premium levels. The Board estimates the percentage by May 1st and insurers begin collecting them from insureds on July 1.¹⁵ The percentage to be collected is determined on the basis of anticipated premiums, so it is impossible to determine precisely.

2. Problems with the Assessment Process -- Lack of Predictability

The assessment process is not precise, especially with respect to assessments of insurers. Because the assessment rate is applied to premiums collected from employers on an ongoing basis during the fiscal year, the amount of total assessments collected is not known until the end of the fiscal year. In each year since FY98, the amount collected exceeds the target assessment amount (from \$350,000 to \$1.4 million)¹⁶. Another reason for assessment totals to exceed the amount anticipated is that audits of insurers or employers in later years may turn up additional amounts due to the Board, and those amounts are credited to the year in which they should have been paid, rather than the year in which they are collected.

The unpredictability causes 2 problems. First, in order to avoid a revenue shortfall, the Board may estimate the premium percentage high and end up collecting too much from insured employers. The use of the excess collections is limited in 2 ways. First, the Board may not spend money in excess of its allocation, even if it has excess funds on hand.¹⁷

Second, Title 39-A provides a formula for use of the excess collections. Amounts collected that exceed the statutory dollar cap for that fiscal year by more than 10% must be “returned to employers.” Amounts collected that exceed that cap, within

¹⁴ In the Maine Law Court decision, Hanover Ins. Co. v. Workers' Compensation Board, 1997 ME 104, 695 A.2d 556 (1997), the assessment law was interpreted to require that the assessment for insurers be stated as a percentage of premium, rather than a dollar amount.

¹⁵ Insurers remit collections quarterly, unless the total due is less than \$50,000. Those smaller sums must be paid by June 1.

¹⁶ See Appendix F for information on expenditures and assessments

¹⁷ The primary allocation, or permission to spend, comes from the biennial budget bill. However, allocations may be increased in 2 ways. Legislation can be enacted to specifically authorize an additional allocation. (See, e.g., PL 2001, chapter 393) If the Legislature is not in session, the Governor, through the Bureau of the Budget, can issue a “Financial Order” authorizing the Board to spend additional money, as long as money is on hand and can legally be spent for the intended purpose. Financial Orders are reported to the Joint Standing Committee on Appropriations and Financial Affairs during the interim, but generally review occurs after the Order takes effect.

the first 10%, must first be used to fund the Board's allocation, then deposited in a reserve account until the maximum reserve is achieved,¹⁸ then used to reduce the next year's assessment. Because of this formula, the Board has in recent years been forced to appear before the Legislature seeking access to reserve funds to cover its budget, even though its assessment for the year is well below the statutory dollar limit. This has created confusion on the part of those trying to understand the Board's finances.

3. Alternative Methods of Funding

The Commission examined other possible funding methods to determine whether there is a more predictable revenue source. Appendix G summarizes the methods used in other states to fund their workers' compensation administrative agencies. A few are funded by General Fund dollars or by fees.

Most state workers' compensation agencies, like Maine's Workers' Compensation Board, are funded by assessments. Many other states, however, allocate the assessment among insurers on the basis of prior year premiums, rather than trying to predict premiums for the upcoming year. This makes the assessment collection more predictable. However, insurer representatives told the Commission that such a system shifts the unpredictability to the insurer since, without a specific rate to apply to premiums, the insurer has to estimate the likely premium and somehow account to employers for overcollections or turn over more to the Board than they collected as a pass-through to employers. Also, since premium levels change from year to year, insurers with little market share in the current fiscal year, may owe a sizeable assessment, but have no premium base from which to collect it.

Given that each potential funding method has advantages and disadvantages, and that the disadvantages of the current system did not appear critical, Commission members did not conclude that a change in the assessment process was necessary. Commissioner Murray, of the Department of Professional and Financial Regulation, told the commission that he believes the assessment process needs to be made more predictable. With more predictable assessment collections, he believes that the Board would not need a reserve account. Executive Director Dionne commented that the reserve account would still be needed to cover unexpected expenses, such as salary increases, unless the assessment cap was indexed to take those increases into account. Without an increase in the assessment cap, or the ability to access the State's salary plan, the Board will bump up against limits again within the next few years.

Commissioner Murray's proposal, to base insurer assessments on prior year premiums, is included as Appendix H. The proposal was submitted after the Commission's final meeting, so the Commission did not take a position on the specific proposal.

¹⁸ The maximum reserve amount is ¼ of the board's annual budget. Title 39-A, section 154, subsection 6.

4. Complexity of Relationship between the Assessment, the Cap and the Budget

A second problem with the assessment process is the complicated relationship between the assessment cap and the Board's budget. This has caused misunderstanding. For example, the BDMP report concluded that the Workers Compensation Board was not operating with a balanced budget and recommended that the Board's budget not exceed its assessment cap. The assessment cap, however, is not an expenditure limit as currently provided in statute.

The total amount that the Board may spend is determined through the Legislative process; without an "allocation" contained in legislation and approved by the Legislature and the Governor, the Board may not spend money even if it has it on hand. The allocation is permission to spend money. The assessment, on the other hand, is just one of the sources of revenue that the Board may use. The statutory assessment cap is a limit on the amount that the Board can send out assessment bills to collect. The assessment cap, as many appear to believe, is not an expenditure limit. So, for example, in FY99, the Board could legally budget for \$6.855 million even though the assessment cap was set as \$6.6 million. The additional funding is provided by investment income, certain fines collected by the Board, and sales of publications. As long as the expenditure does not exceed the allocation, the Board operates within legal limits.

As a result of the thorough discussion of this issue, Commission members expressed the belief that they have improved their level of understanding of the relationship between the assessment cap, the allocation, and the budget.

5. Reserve Account

A second confusing element of the Board's funding is the reserve account created by Title 39-A, section 154, subsection 6. When assessment collections exceed the Board's budget, the excess goes into a reserve account¹⁹ until the reserve account reaches ¼ of the budget. The Board has always believed that it could use the Reserve Fund to cover costs that were not budgeted for, such as increases in salary and benefits costs, especially health insurance costs. Without access to a salary plan²⁰, or to increases in its assessment, the Board had difficulty covering staff cost increases. The Bureau of the Budget, which determines whether the Board has available resources to fund a particular cost, believed that the statute did not authorize the use of the reserve fund for ongoing basic costs. This disagreement over interpretation of the law led to tension between the Board and the Bureau of

¹⁹ Account is not a separate pot of money, but is accounted for in records

²⁰ Most state agencies have access to a State Salary Plan, which provides funds to cover salary and benefit increases during a biennium. The Workers' Compensation Board does not have a salary plan.

the Budget, as well as several appeals directly to the Legislature for permission to use the reserve fund to cover budget deficits or special projects.²¹

In 2003, the Board sought and won approval of legislation that amends Title 39-A to allow the Board to use the reserve account as a source of revenue to cover any legitimate costs related to its administration of the workers' compensation system.²² Therefore, the Board could potentially count the reserve fund as available revenue, in addition to its assessment, investment income and other sources, in determining how much they can request for an allocation. This could occur in the initial budgeting process or in an off-session request for a financial order from the Governor. For this reason, the Board was required by the new law to report to the Joint Standing Committee on Labor whenever they sought permission from the Bureau of the Budget for a Financial Order to use reserve funds to increase their allocation.

D. Expenditures – Amount and Allocation

Although the study focus was directed to the budgeting process, not the budget itself, commission members also discussed the level of Board expenditures and the allocation of funds within the Board.

The Board's total budget has risen from \$6.06 million in FY98 to \$6.99 million in FY01 and \$8.69 million in FY03. Some of the increases are attributable to added programs or staff. For example, 10 positions were added and the budget was increased by \$600,000 when the Worker Advocate and the Monitoring Auditing and Enforcement (MAE) program were created in FY98. Those programs have both been expanded since their creation to include additional staff and resources.

With regard to the level of funding for the MAE program, some members argued that additional funding is needed. They argued that expanded auditing of insurers would allow the program to audit for additional matters, e.g., unwarranted refusal to pay benefits. Reducing unnecessary disputes would, in turn, reduce costs of the system. Other Commission members argued that the program is sufficiently funded, but could probably be made more efficient.

No specific recommendations were made relating to expenditure amounts or allocation among programs.

²¹ PL 2001, c. 393 (request for \$40,000 to fund technology for the Monitoring, Auditing and Enforcement (MAE) program), Res. 2001, c. 49 (\$700,000 for FY '02 expenses), Res. 2001, c. 126 (\$1,341,750 to balance the FY 03 budget)

²² PL 2003, c. 93

III. Commission Conclusions

A. Budget Development within the Workers' Compensation Board

Commission members agree that the Board has taken steps to improve internal and external accountability for its budget by (1) allocating expenses to specific activities, or “cost centers” and (2) by creating performance standards or benchmarks. The Commission urged the Board to continue monitoring costs and developing benchmarks, especially through its revision of the Board’s business plan.

Oversight of the budget process and budgeting results by the Legislature is an important part of accountability to the public. The Joint Standing Committee on Labor is directed by statute²³ to review the Board’s budget, but has not always done so at the time of the biennial budget request. The Commission urges the Labor Committee to meet that responsibility more rigorously, and urges the Board and its Executive Director to develop a more understandable way to present budget information to the Legislature as well as a way to seek input in development of the budget.

B. Revenue Stream

Although the current revenue collection method is somewhat unpredictable and generally results in overcollection, it appears to members of the Commission that the current law is adequate for the needs of the Board, especially with the availability of the reserve fund to cover cash flow problems. Other methods of collecting revenue have advantages and disadvantages over the current system. However, no consensus emerged from commission discussion that the current system needed to be changed. The Commissioner of Professional and Financial Regulation urged the Commission to change the assessment process. He submitted proposed legislation to alter the method of assessment, but the proposal was not provided in time for the Commission members to discuss it. That proposal is included in Appendix H without a recommendation from the Commission.

C. Allocation of Board Resources

Commission members agreed that reducing the number of unreasonable disputes would benefit participants in the system as well as reducing costs. Some members felt that allocating more resources to the MAE program would enhance efforts to reduce unreasonable disputes. Others felt that the program could accomplish its goals by focusing its efforts and becoming more efficient, and did not need additional funds.

²³ Title 3, section 522-B

APPENDIX A

Authorizing Legislation

CHAPTER 425

S.P. 21 - L.D. 35

**An Act To Increase the Assessment on Workers' Compensation
Insurance To Fund the Workers' Compensation Board
Administrative Fund**

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

Whereas, the operating expenses necessary for the Workers' Compensation Board to provide adequate services to the employers and workers of this State have increased to a level beyond that contemplated by the current assessment limit; and

Whereas, if additional funding is not available before the 90-day period has expired, it may become necessary for the Workers' Compensation Board to suspend the employee advocate program and lay off the advocate staff; 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. 39-A MRSA §152, sub-§2-A is enacted to read:

2-A. Electronic filing rulemaking. The board shall adopt rules requiring the electronic filing of information required by

this Act and by board rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. The rules must be developed through the consensus-based rule development process set forth in Title 5, section 8051-B and must include as participants representatives of employers, insurers and 3rd-party administrators.

B. The rules must include written standards and procedures for implementation of the standards, which may include definition of the applicable programming interface for in-state and out-of-state entities required to submit reports. The rules must relate specific forms required to be filed with data points in the standards.

Before adopting the rules, the board shall test the applicable application programming interfaces and standards to ensure that the program operates successfully.

Sec. 2. 39-A MRSA §154, sub-§6, as amended by PL 2003, c. 93, §1, is further amended to read:

6. Assessment levied. 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 ~~or~~, 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 or more than \$8,525,000 beginning in the 2005-06 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 ~~or~~, \$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 or \$8,525,000 beginning in the 2005-06 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. The board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services account expenditures and All Other account expenditures and to help defray the costs incurred by the board pursuant to this Act including administrative expenses, consulting fees and all other

reasonable costs incurred to administer this Act. The board shall notify the chairs and members of the joint standing

committee of the Legislature having jurisdiction over labor matters whenever the board receives approval from the State Budget Officer and the Governor to use reserve funds to increase its allotment above the allocation authorized by the Legislature. Any collected amounts or savings above the allowed reserve must be used to reduce the assessment for the following fiscal year. The board shall determine the assessments prior to May 1st and shall assess each insurance company or association and self-insured employer its pro rata share for expenditures during the fiscal year beginning July 1st. Each self-insured employer shall pay the assessment on or before June 1st. Each insurance company or association shall pay the assessment in accordance with subsection 3.

Sec. 3. Review. A commission is established to review the budget process of the Workers' Compensation Board.

1. Members. The commission consists of 2 Senators appointed by the President of the Senate, one representing each of the 2 political parties in the Legislature with the greatest number of members, 2 members of the House of Representatives appointed by the Speaker of the House of Representatives, one representing each of the 2 political parties in the Legislature with the greatest number of members, and 2 members of the Workers' Compensation Board, one representing and appointed by the labor members of the board and one representing and appointed by the management members of the board.

2. Chairs. The first-named Senator and the first-named member of the House of Representatives are the chairs of the commission.

3. Appointments; convening of commission. All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. Within 15 days after appointment of all members, the chairs shall call and convene the first meeting of the commission.

4. Duties. The commission shall review the process used by the Workers' Compensation Board to establish, approve and monitor its budget and determine whether improvements are needed. The commission shall determine whether recommendations regarding the budget process contained in the 1997 Coopers and Lybrand report and the 2001 Berry, Dunn, McNeil and Parker report have been implemented and, if not, whether and how they should be implemented.

5. Report. The commission shall report its findings and recommendations, along with any recommended legislation, to the Joint Standing Committee on Labor not later than December 3, 2003. The Joint Standing Committee on Labor is authorized to submit legislation to the Second Regular Session of the 121st Legislature in response to the report.

6. Expenses and per diem. Commission members who are Legislators are entitled to receive legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at meetings of the commission. Commission members who are members of the Workers' Compensation Board are entitled to per diem and expenses as provided in Title 39-A, section 151, subsection 6. The Workers' Compensation Board shall transfer sufficient funds from its reserve fund to the Legislature to cover the costs of legislative per diem and expenses for commission meetings.

7. Staff. The Workers' Compensation Board shall provide staffing to the commission. Upon approval by the Legislative Council, the Office of Policy and Legal Analysis and the Office of Fiscal and Program Review shall also provide staff assistance to the commission.

8. Extension. If the commission requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension.

9. Commission budget. The chairs of the commission, with assistance from the commission staff, shall administer the commission's budget. Within 10 days after its first meeting, the commission shall present a work plan and proposed budget to the Legislative Council for its approval. The commission may not incur expenses that would result in the commission's exceeding its approved budget. Upon request from the commission, the Executive Director of the Legislative Council shall promptly provide the commission chairs and staff with a status report on the commission budget, expenditures incurred and paid and available funds.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

WORKERS' COMPENSATION BOARD

Administration - Workers' Compensation Board 0183

Initiative: Allocates funds for the board to contract with the Department of Labor for programming services to implement electronic filing by insurers and self-insurers.

Other Special Revenue Funds 2003-04 2004-05 All Other \$40,000 \$40,000

Other Special Revenue Funds Total	<u>\$40,000</u>	<u>\$40,000</u>
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**Administration - Workers' Compensation
Board 0183**

Initiative: Provides for increased revenue allocation, restoration of positions and All Other costs for the central office, dispute resolution and the worker advocate programs to continue program operations. It also restores fiscal year 2004-05 funding for the law clerk at the administrative office of the courts.

Other Special Revenue Funds	2003-04	2004-05
Positions - Legislative Count	(23,000)	(24,000)
Personal Services	\$1,363,043	\$1,431,589
All Other	242,711	247,794
Other Special Revenue Funds Total	<u>\$1,605,754</u>	<u>\$1,679,383</u>

**Administration - Workers' Compensation
Board 0183**

Initiative: Allocates funds for Department of Labor programming services.

Other Special Revenue Funds	2003-04	2004-05
All Other	\$70,000	\$70,000
Other Special Revenue Funds Total	<u>\$70,000</u>	<u>\$70,000</u>

**Administration - Workers' Compensation
Board 0183**

Initiative: Provides for the reduction in All Other funds for the purpose of staying within the assessment level recommended by the board.

Other Special Revenue Funds	2003-04	2004-05
All Other	(\$20,004)	(\$25,413)
Other Special Revenue Funds Total	<u>(\$20,004)</u>	<u>(\$25,413)</u>

**Administration - Workers' Compensation
Board 0183**

Initiative: Provides for the elimination of one Hearing Officer position for the purpose of staying within recommended available resources.

Other Special Revenue Funds	2003-04	2004-05
Positions - Legislative Count	(-1.000)	(-1.000)
Personal Services	(\$140,512)	(\$140,244)
Other Special Revenue Funds Total	<u>(\$140,512)</u>	<u>(\$140,244)</u>

**Administration - Workers' Compensation
Board 0183**

Initiative: Allocates funds to contract for temporary worker advocate and clerical support services and associated overtime for the Worker Advocate Program offices in Portland and Augusta. Recent changes by the Bureau of Accounts and Controls prohibit the encumbering of a contract in fiscal year 2002-03 for services to be provided in fiscal year 2003-04. Funding is available for these expenditures in fiscal year 2003-04 from the unexpended cash in fiscal year 2002-03.

Other Special Revenue Funds	2003-04	2004-05
Personal Services	\$30,000	\$0
All Other	140,000	0
Other Special Revenue Funds Total	<u>\$170,000</u>	<u>\$0</u>

**WORKERS' COMPENSATION BOARD
DEPARTMENT TOTALS**

	2003-04	2004-05
OTHER SPECIAL REVENUE FUNDS	\$1,725,238	\$1,623,726
DEPARTMENT TOTAL - ALL FUNDS	<u>\$1,725,238</u>	<u>\$1,623,726</u>

LEGISLATURE

**Commission to Review the Budget
Process of the Workers' Compensation Board**

Initiative: Allocates funds to reflect the reimbursement to be received from the Workers' Compensation Board reserve fund to cover the costs of legislative per diem and expenses.

Other Special Revenue Funds	2003-04	2004-05
Personal Services	\$880	\$0
All Other	830	0
	<u> </u>	<u> </u>

Other Special Revenue Funds Total	\$1,710	\$0
LEGISLATURE	2003-04	2004-05
OTHER SPECIAL REVENUE FUNDS	\$1,710	\$0
DEPARTMENT TOTAL - ALL FUNDS	<u>\$1,710</u>	<u>\$0</u>
SECTION TOTALS	2003-04	2004-05
OTHER SPECIAL REVENUE FUNDS	\$1,726,948	\$1,623,726
SECTION TOTAL - ALL FUNDS	<u>\$1,726,948</u>	<u>\$1,623,726</u>

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 2003.

APPENDIX B

Membership list

**COMMISSION TO REVIEW THE BUDGET
PROCESS OF THE WORKERS'
COMPENSATION BOARD**

**COMMISSION TO REVIEW THE BUDGET PROCESS OF THE WORKERS'
COMPENSATION BOARD**

PL 2003, Ch 425

As Of Tuesday, August 12, 2003

Appointment(s) by the President

Sen. Betheda G. Edmonds **Chair**
122 Hunter Road
Freeport, ME. 04032
(207)-865-3869

Sen. Kenneth Blais
107 Pine Tree Road
Litchfield, ME 04350

Appointment(s) by the Speaker

Rep. William J. Smith **Chair**
P.O. Box 7
Van Buren, ME. 04785
(207)-868-3418

Rep. Russell P. Treadwell
Damascus Road
RR 2 Box 1570
Carmel, ME 04419
(207)-848-5123

Workers Comp Board

John Cooney
12 Baxter Lane
Brunswick, ME 04011

Representing Management Members

Anthony Monfietto
121 Deepwood Drive
Portland, ME 04103

Representing Labor Members

Staff: Deb Friedman, OPLA, 287-1670

APPENDIX C

**Budget Process Recommendations from the Berry Dunn McNeil and Parker Report;
Workers' Compensation Board Report on Implementation of Recommendations**



State of Maine
Department of Administrative and Financial Services
Workers' Compensation Board Governance Study
December 15, 2001

BERRY, DUNN, MCNEIL & PARKER



CERTIFIED PUBLIC ACCOUNTANTS
MANAGEMENT CONSULTANTS



12. Fiscal accountability at the WCB Board of Directors' level should be improved.

Issue: WCB Board of Directors lack direction with regard to their roles and responsibilities. Fiscal reports reviewed by board members are not sufficient to enable board members to evaluate management or overall WCB fiscal performance. Management is not held accountable for budget shortfalls.

Recommendation: Accountability at the WCB Board of Directors level should be improved. Duties and responsibilities of WCB Board of Directors should be defined through formal policies to guide their actions. Financial reporting to the WCB Board of Directors should be improved by



increasing the level of financial detail evaluated by board members and the frequency at which the detail is monitored.

Implementation: Short-term
Responsibility: Management and Board

13. A formal policy regarding the use and maintenance of accumulated reserves should be developed. Legislation should be submitted to memorialize that policy in statute.

Issue: Assessments received above the Board's allocated budget and with a 10% margin must be used to create a reserve. The WCB desires to use the accumulated reserve funds to cover budget shortfalls. Clarity surrounding the appropriate use of board reserves appears to be missing within the current statute.

Recommendation: A reserve is important and enables the WCB to maintain a prudent level of financial resources and protect against reducing service levels or reallocating resources due to temporary budget shortfalls. A formal policy for the creation, use, and maintenance of accumulated reserves should be developed and enacted into Legislation.

Implementation: Short-term
Responsibility: Board and Legislature

14. A more predictable revenue model should be developed and implemented.

Issue: Projection of the revenue stream has not been adequate. Revenues continually change because the method used to predict revenues is unreliable. This has resulted in significant differences between initial budgeted revenue and actual revenue.

Recommendation: The WCB should formulate and implement a new revenue model. Use indemnity claims paid as a basis for determining assessments levied on employers and self-insured employers. This will enhance the predictability of the revenue stream. This model should be documented in a manual to promote a better understanding of the revenue determination process.

Implementation: Long-term
Responsibility: Board and Management

15. An in-depth understanding of revenue should be maintained by the WCB Board of Directors.

Issue: Excess assessments have been accruing and do not appear to be returned to employers in accordance with the Statute.

Recommendation: The WCB Board of Directors needs to gain and maintain an in-depth understanding of its revenue model. For example, training on this topic could be part of a new



board member orientation process. WCB Board of Directors should monitor the accumulation of excess assessment revenue collected to ensure the Board is in compliance with the Statute.

Implementation: Long-term
Responsibility: Board

16. A balanced budget should be developed.

Issue: The WCB is not operating within a balanced budget. A balanced budget is a basic budgetary constraint intended to ensure the WCB does not spend beyond the maximum assessment.

Recommendation: Biennial budgets submitted to the Bureau of Budget should not exceed the maximum assessment levied per Subsection 154 of the Statute. WCB should operate within a balanced budget. Management should monitor budget-to-actual performance monthly. Compliance with the budget policy should be reviewed periodically and during the budget process.

Implementation: Short-term
Responsibility: Board and Management

17. Program expenditures, over time, should be evaluated.

Issue: Budgeted expenditures within discretionary areas have been reallocated to cover budget shortfalls in the Monitoring, Audit and Enforcement and Worker Advocate Programs. Budgeted expenditures for these two programs appear to be based upon high-level estimates and have not been predictable. Without performing adequate program expenditure analysis regularly, decisions regarding additional revenue needs will not be substantiated.

Recommendation: Program expenditures need to be monitored and evaluated as to how they change over time. This will help identify recurring and non-recurring costs, best enable management to control program costs in an ongoing and proactive manner, and substantiate decisions that will require additional funding for WCB or changes to imposed funding limits.

Implementation: Short-term
Responsibility: Board and Management



3.5 Budgeting Roles and Responsibilities

Findings	Analysis	Conclusions
<p>The board does not appear to hold management accountable for budget shortfalls.</p>	<p>Effective board policies provide direction for the WCB Board of Directors. Without a written policy, duties and responsibilities of board members are not defined, communicated, or discharged.</p>	<p>Duties and responsibilities of WCB Board of Directors should be defined through formal policies to guide their actions. Recommendation 12</p>
	<p>The WCB Board of Directors should be responsible for establishing performance standards for the ED and the Deputy Directors. Without such standards, the WCB Board of Directors cannot adequately assess management's performance.</p>	<p>Financial performance standards for the ED and management team members should be developed and implemented by the WCB Board of Directors to enhance accountability of management and to serve as a tool to assess management and the agency's performance in comparison to the budget. Recommendation 12</p>



Findings	Analysis	Conclusions
<p>Summary year-to-date, monthly, and quarterly budget-to-actual performance reports are generated by the Deputy Director of Business Services, but are not reviewed by the WCB Board of Directors. Fiscal reports reviewed by board members consist of a high level summary as opposed to a detailed budget analysis.</p>	<p>WCB Board of Directors have general supervision over the administration of the statute and responsibility for the efficient and effective management of the WCB and its employees. General supervision necessitates that WCB Board of Directors become involved to ensure that issues are thoroughly analyzed before corrective actions are approved, and to see that these actions are implemented by the ED. Without sufficient usable fiscal information, WCB Board of Directors are not equipped to evaluate management or overall board performance.</p> <p>Monitoring the WCB operations and performance on a regular basis is implicit in the duty of reasonably supervising WCB management and employees. Generally, monitoring should occur through management reporting at regular board meetings.</p>	<p>A formal board policy should be developed and implemented that reflects the mission of the WCB. WCB Board of Directors should receive orientation and training in responsibilities and policies. Recommendation 12</p> <p>The WCB should evaluate its financial performance relative to the budget on a monthly, quarterly, and yearly basis to supervise the administration of the statute, increase accountability of management, and monitor changes in operations as they occur. By increasing the level of detail evaluated as well as the frequency, board decisions relative to financial performance will be more timely and appropriate. Recommendation 12</p>
<p>Budget information made available to the WCB Board of Directors does not enable them to adequately monitor board performance.</p>	<p>Best practices suggest that key fiscal data presented should emphasize performance accompanied by summary comments. Key fiscal data will enable the WCB Board of Directors to easily compare WCB performance against its fiscal goals.</p>	<p>Each month, the WCB Board of Directors should review the budget. Budget performance reports should be concise, accurate, and timely. Budget reports should help directors assess the financial condition of the WCB and identify adverse trends. Financial data for board review should include comparisons of the prior period's actual results-to-current period budget. Budget-to-actual performance results and variances should be reported and explained by the ED, including corrective actions that are required. Recommendation 12</p>
<p>WCB Board of Directors do not appear to monitor their own expenditures in comparison to the budget.</p>	<p>Without accountability, WCB Board of Directors do not appear to meet their implicit duty of responsibility for the efficient and effective management of the WCB and its employees.</p>	<p>WCB Board of Directors should lead by example. Recommendation 12</p>



3.6 Budget Process

Findings	Analysis	Conclusions
<p>Biennial budgets submitted to the Bureau of Budget have exceeded the maximum assessment levied per Subsection 154.6 of the statute. The budgets submitted take into consideration investment income, fees, and other miscellaneous revenues. The board does not currently budget for annual contractual personnel increases. The Bureau of Budget has experienced untimely budget information in the form of additional Financial Orders from the board.</p>	<p>A balanced budget is a basic budgetary constraint intended to ensure the WCB does not spend beyond the maximum assessment.</p>	<p>The WCB should develop a written budget policy. This policy should define a balanced operating budget, commitment to budget, and provide for disclosure when a deviation from a balanced budget occurs. Compliance with the policy should be reviewed periodically and disclosed during the budget process. Recommendation 16</p>
<p>The WCB Board of Directors believes the accumulated board reserves are available to them to cover increasing expenditures and any potential budget shortfalls. Clarity of the current statute wording regarding the appropriate use of board reserves appears to be subject to interpretation.</p>	<p>A formal policy developed to guide the creation, maintenance, and use of accumulated reserves will enable the WCB to maintain a prudent level of financial resources to protect against reduced service levels or reallocating resources because of temporary budget shortfalls.</p>	<p>A policy for the creation, use, and maintenance of accumulated reserves should be established and the purpose for which they may be used should be identified. Legislation should be submitted to memorialize that policy in statute. Development of maximum and minimum accumulated reserve amounts may be advisable. Recommendation 13</p>
<p>Budgets for the MAE and WA programs consist of high level estimates, which are not quantifiable. This has resulted in budget shortfalls and the need to re-allocate expenditures. A detailed expenditure analysis of both programs appears not to have been undertaken. Board members, the ED, and the Deputy Director believe the reserve account is available to cover these shortfalls.</p>	<p>Expenditure analysis and projections provide critical information to WCB Board of Directors and stakeholders about whether projected expenditure levels can be sustained, and whether a program's current and future costs are acceptable as compared to benefits and future revenues. Without performing adequate expenditure analysis, decisions regarding future program revenue and overall board revenue needs will not be substantiated.</p>	<p>Expenditure projections should be developed and prepared on a multi-year basis for each program. Costs need to be evaluated on how they change over time, to isolate non-recurring costs or savings, and to understand the implications of all costs once the program is implemented. Expenditure estimates should identify service level assumptions and key issues that may affect actual expenditures. Projections should be made available to stakeholders and WCB Board of Directors prior to making budget decisions. Recommendation 17</p>



3.7 Revenue Stream

Findings	Analysis	Conclusions
<p>Revenues continually change for prior fiscal years, which has resulted in significant differences between initial budgeted revenue and actual surcharge revenue received. Predictability of the final revenue amount for any given fiscal year has not been accurate.</p>	<p>State research conducted indicates that assessments for similar state boards or workers' compensation administrative programs are based upon indemnity claims paid in the prior year. The amount assessed employers and self-insured employers in the current year is a function of total indemnity claims paid in the prior year rather than using a percentage of estimated premiums. For each state that utilized this formula, the revenue stream was found to be predictable.</p>	<p>The WCB should formulate a revenue model for assessment determination, projection, and budgeting that incorporates indemnity claims paid as an assessment base for both employers and self-insured employers. Indemnity claims paid by insurance companies is a determinable amount, which would not be subject to future adjustment, unlike premium audit adjustments. Assessments based upon indemnity claims paid would enhance the predictability of the forecasted revenue for a given fiscal year.</p> <p>This model should be documented in a manual to promote a better understanding of the revenue determination process. By enhancing the predictability of the estimated revenues, stakeholders will have increased confidence in overall revenue projections.</p> <p>Recommendation 15</p>
<p>Excess assessments revenue has accumulated and resulted in the corresponding significant reduction in an assessment rate in recent fiscal years. Excess assessments for fiscal year 1997 appeared not to be returned to employers of the State of Maine until fiscal year 1999 and into 2000.</p>	<p>Assessments collected above the allowed reserve must be used to reduce the assessment for the following fiscal year.</p>	<p>The accumulation of revenues collected above the WCB's allowed reserve for a given fiscal year must be monitored by WCB Board of Directors and management in order to ensure the WCB is in compliance with provisions of the Act.</p> <p>Analyzing forecasted revenue variances should be performed by WCB Board of Directors and management on a regular basis to enable the WCB to improve projections for the future.</p> <p>Recommendation 15</p>
<p>The reduction of fiscal year 1999, 2000, 2001, and 2002 assessments by \$250,000, \$1,500,000, \$1,735,000, and \$2,000,000 is not quantifiable. The basis for the reduction in the assessments is an estimate and appears to exceed excess assessments received from prior fiscal years.</p>	<p>Without WCB Board of Directors maintaining a full understanding of the revenue projection process and the inherent variability in the projection of revenues, issues may not be uncovered in a timely manner. This can impede WCB Board of Directors from developing options and taking actions in an effective manner.</p>	<p>WCB Board of Directors and management should maintain an in-depth understanding of board revenue. An analysis of revenue projection and variances will increase the WCB Board of Directors' ability to predict changes which will be less disruptive to the fiscal budget going forward.</p> <p>Recommendation 15</p>





Findings	Analysis	Conclusions
The breakdown of total excess assessments revenue received and the total board accumulated reserve dollars is not easily identifiable.	Documentation surrounding assessments received for any given fiscal year used to create a reserve and amounts above the reserve are important to the administration function of the WCB and the overall predictability of revenue projections.	Develop and maintain a revenue manual that documents revenue sources and factors relevant to present and future revenue sources. The document will promote a better understanding of resources and will assist with the administration of the budget process. Recommendation 15

3.8 Expenditures

Findings	Analysis	Conclusions
Budgeted expenditures have been re-allocated amongst individual line items within discretionary budget areas to cover shortfalls in the MAE and WA programs. As a result, additional Financial Orders for previously budgeted expenditures have been requested of the Bureau of Budget.	WCB Board of Directors and management should periodically evaluate the performance of the programs and services the board provides. Programs and activities should be reviewed to determine whether they are accomplishing intended program goals and making efficient use of resources. A performance evaluation provides both accountability and information on which to base improvements. Program performance information should be available during the budget process.	Performance measures, including efficiency and effectiveness measures, should be presented in basic budget materials. Measures should document progress toward achievement of goals and objectives. Recommendation 10
Board expenditures paid include costs associated with a law clerk position which does not appear to be a WCB position. Expenditures for this position have not been allowed to be built into the Biennial budget at the State level.	Budgetary results should be analyzed by the WCB Board of Directors on a monthly, quarterly, and yearly basis to monitor expenditure results and make appropriate planning decisions.	WCB Board of Directors should regularly monitor detailed expenditures. This provides an early warning of potential problems and enables the WCB Board of Directors to take action in a timely manner. Recommendation 17

BERRY, DUNN MCNEIL & PARKER MATRIX

RECOMMENDATION	IMPLEMENTATION	FUTURE PLANS
12. Fiscal accountability at the WCB Board of Directors should be improved.	The Board has implemented cost center budgeting. The Board will be responsible for setting and monitoring the budget on a policy level. Individual managers will be responsible for budget and performance in individual cost centers.	The Board will monitor the implementation of cost center budgeting.
	The Board will receive monthly reports showing the amount of money that was allocated and the amount that was spent.	Variances will be identified and explained.
13. A formal policy regarding the use and maintenance of the accumulated reserves should be developed. Legislation should be submitted to memorialize that policy in statute.	The Board proposed L.D. 9 to clarify the use of reserves. L.D. 9 was ultimately enacted as P.L. Ch. 93.	Use of reserves has been clarified.
14. A more predictable revenue model should be developed and implemented.	The Board is considering statutory amendments that would require insurers as well as self-insurers to be assessed a dollar amount.	The Board will obtain more input regarding this recommendation.
15. An in-depth understanding of revenue should be maintained by the WCB Board of Directors.	The Board currently receives a monthly report showing revenue received on a monthly and year-to-date basis.	The Board will continue to receive monthly reports concerning revenue.
	The Board tracks revenues and forecasts collections when calculating the assessment.	The Board will continue to track revenue and forecast collections to determine if a surplus exists when calculating the assessment.
16. A balanced budget should be developed.	The Board has always submitted balanced budgets. Requests that exceed anticipated revenue are always accompanied by a proposal to generate the	The Board will continue to submit balanced budgets.

	necessary revenue.	
17. Program expenditures, over time, should be evaluated.	The Board receives monthly reports from managers relating to performance of the various units.	Managers will continue to report to the Board on a monthly basis.
	The Board has continually monitored the workload of the Worker Advocates as it relates to the Standard Operating Procedures (SOPs) for dispute resolution. Resources have been shifted to the Worker Advocate program to ensure that the dispute resolution SOPs can be met while still providing quality representation for injured workers.	The Board will continue to monitor the activity of the Worker Advocates, the MAE program as well as the other cost centers.

Prepared by the Maine Workers' Compensation Board
September 2003

APPENDIX D

Outline of the Process for Developing the Workers' Compensation Board Budget

Board's Budget Officer to submit the approved budget to the Bureau of the Budget by September 1, 2002, as required.

V. Last Minute Changes.

At the end of August, the Board was informed by the Bureau of the Budget that costs associated with retiree health had increased statewide. This amounted to an additional expenditure of \$300,000 for the Board. The Subcommittee reconvened to address this additional expense. In order to meet this obligation, the Subcommittee recommended, and the full Board approved, a plan to cut personal services by an additional \$150,000 and to increase the assessment cap by an additional \$150,000.

VI. Spending Authority.

Ultimately, the Part I budget and L.D. 35 were enacted. Together, they increased the assessment cap and authorized the Board to spend approximately \$8,900,000 in FY 2004.

VII. Assessment.

The Board calculated and issued its assessment as detailed in the attached calculation sheets. (n.b. – The Board normally determines and issues the assessment by May 1. The process was delayed this year to avoid having to issue two assessments.)

Prepared by the Maine Workers' Compensation Board
September 2003

APPENDIX E

Example of Cost Center Accounting

APPENDIX F

History of Board Assessments and Expenditures

Summary of Assessments and Expenditures Workers Compensation Board Administrative Fund

	FY98	FY99	FY00	FY01	FY02	FY03
Statutory Cap on Assessment	\$6,600,000	\$6,600,000	\$6,735,000	\$6,735,000	\$7,035,000	\$6,860,000
Assessment Billed	\$6,600,000	\$6,350,000	\$5,100,000	\$5,000,000	\$4,735,000	\$5,640,000
Assessment Received	\$8,068,110	\$6,704,416	\$6,371,085	\$6,462,485	\$5,311,000 YTD	\$4,356,011 YTD
Budget Allocation	\$6,060,687	\$6,855,515	\$6,827,879	\$6,999,165	\$8,094,777	\$8,691,175
Actual Expenditure	\$6,244,676	\$6,799,166	\$6,926,392	\$7,117,125	\$7,808,144	\$5,559,846 YTD
Excess of Receipts over Amount Billed	\$1,468,110	\$354,416	\$1,271,085	\$1,462,485	\$576,900	
Amount Allocated to Reserve	\$660,000	\$354,416	85,584	_____		
Amount Returned to Employers (returned by reducing the total assessment)	\$____	\$250,000	\$1,500,000	\$1,735,000	\$2,000,000	\$1,220,000

Note: FY98 = July 1, 1997 to June 30, 1998

Prepared by the Office of Policy and Legal Analysis, March 3, 2003

Source: Berry Dunn McNeil and Parker study report, 2001 and Workers' Compensation Board Staff

APPENDIX G

Funding and Assessment Methods of Other States

**SUMMARY of FUNDING MECHANISMS for
STATE WORKERS' COMPENSATION REGULATORY AGENCIES**

Except as otherwise specified, most states fund the operating cost of their workers' compensation agencies through an assessment or a tax on both insurers and self-insured employers.

In most cases, the assessment goes directly to the agency, but cannot be spent unless it is allocated by the Legislature and the Governor. In some states, the assessment or tax is deposited directly into the General Fund, and all or a portion of the amount is appropriated to the agency from the General Fund by the Legislature and Governor.

In one state (Maryland), a 12-member Advisory Committee advises the governor on the budget.

State	Source of Funds	Basis for Assessment
ALABAMA	Assessment	Based on compensation paid
ALASKA	User fee	
ARIZONA	Premium tax	
ARKANSAS	Premium tax	
CALIFORNIA	General Fund Plus supplemental funding of system improvements provided by user assessment	Amount appropriated from the General Fund = 1989 funding, adjusted for inflation and work force User assessment is based on expected premium (ins) or indemnity benefits paid (SI)
COLORADO	Premium surcharge (Deposited in General Fund; in 2002, 100% went to WC agency)	
CONNECTICUT	Assessment	Based on Benefits Paid
DELAWARE	Assessment on Insurers Assessment of self-insured (goes to the General Fund)	Based on benefits paid (ins) Based on covered payroll (SI)

FLORIDA	Assessment	Based on net premium collected (ins) or premium that would have been paid (SI)
GEORGIA	Assessment (Deposited in the General Fund)	Based on premiums paid
HAWAII	General Fund	
IDAHO	Premium tax	
ILLINOIS	General Fund	
INDIANA	General Fund Supplemented by fees paid by SI and independent contractors – Directly to agency	
IOWA	General Fund	
KANSAS	Assessment	Based on compensation benefits paid
KENTUCKY	Assessment	Based on premiums
LOUISIANA	Assessment (Deposited in General Fund Dedicated Account)	Based on benefits paid in prior calendar year
MAINE	Assessment divided between insurers and self-insurers on basis of pro rata share of disabling cases attributable to each group	Based on premiums paid (Ins) and Benefits Paid (SI)
MARYLAND	Assessment A 12-member Advisory Committee advises the Governor on the agency's budget	
MASS.	Assessment (plus special trust funds)	
MICHIGAN	General Fund and Assessment of parties	\$100 on each party to a redemption case
MINNESOTA	Assessment collected semi-annually	Based on premiums collected (ins) or indemnity benefits paid (SI)
MISS.	Assessment (plus \$250 per insurer)	Based on gross claims paid

MISSOURI	Premium tax	
MONTANA	Assessment	Percentage of compensation and medical benefits paid
NEBRASKA	Assessment	1% of premium (ins) or 1.25% of prospective loss costs (SI)
NEW HAMPSHIRE	Assessment	Based on pro rata share of total benefits paid in prior year
NEW JERSEY	Annual Assessment	
NEW MEXICO	Assessment collected by Tax Department (which gets administrative fee). A portion goes to pay off bond for construction of WC office	Quarterly fee of \$4 per covered employee (1/2 paid by employee, 1/2 paid by employer)
NEW YORK	Assessment	In proportion to indemnity benefits paid in fiscal year
NO. CAR.	General Fund	
NO. DAKOTA	Employer premium (ND has an exclusive state fund)	
OHIO	Premiums and assessment (Ohio has exclusive state fund) Administrative assessment on self-insured employers	Based on payroll (employers) Based on benefits paid (self-insurers)
OKLAHOMA	General Fund primarily; also revenue from premium taxes, application fees, etc.	
OREGON	Assessment	Based on direct earned premium (ins) and simulated earned premium (SI)
PENN.	Assessment	
RHODE ISLAND	Assessment	Based on gross premium
So. CAR.	General Fund	

	Premium tax is deposited in General Fund; Comp agency gets about 25% of tax collected	
SO. DAK.	General Fund	
TENN.	General Fund Premium tax goes to General Fund; ½ is used for Second Injury Fund	
TEXAS	Assessment deposited in General Fund	Based on unmodified premium
UTAH	General Fund	Assessment based on premiums
VERMONT	Premium tax	
VIRGINIA	Premium tax	
WASHINGTON	Premium (State Fund?)	
WEST VIRGINIA	Premium (W.Va. has exclusive state fund)	
WISCONSIN	Assessment (Deposited in General Fund; 100% goes to agency)	Based on indemnity benefits paid in prior year
WYOMING	Premium tax (Wy. has exclusive state fund)	

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**METHODS of FUNDING WORKERS' COMPENSATION
ADMINISTRATIVE AGENCIES, BY STATE**

**CALIFORNIA
(LABOR CODE §62.5)**

Administrative Structure:

Labor & Workforce Development Agency
Department of Industrial Relations
Division of Workers' Compensation

Funding Mechanism: Pursuant to AB 227 (2003 law chapter 635), the Division will be 100% funded by an employer assessment in the future. Prior to passage of that law, the Division was 80% funded by the General Fund; 20% by Employer Assessment.

The employer assessment is determined as follows: the amount needed is allocated between insured and self-insured employers in proportion to payroll in the most recent year available. Among insured employers, the assessment is allocated in proportion to premium. Among self-insured employers, the assessment is allocated on the basis of indemnity benefits paid in the most recent year.

Contact: Bob Wong, Manager of the Information and Assistance Unit, (415) 703-4600. www.leginfo.ca.gov. According to Mr. Wong, it had gotten too difficult to obtain funding from the General Fund. The employer community seemed to be comfortable with shifting to 100% assessment funding, realizing the need for efficient, effective service from the WC Division. Division is generally acknowledged to be under-staffed. Budget of \$100 million; 1 million claims annually; 850 employees.

**MASSACHUSETTS
(C. 152, §65)**

Administrative Structure

Department of Labor and Workforce Development
Division/Department of Industrial Accidents

Funding Mechanism: The Division has 3 sources of revenue: an employer assessment, fines (\$100 a day for failure to timely file a First Report) and a referral fee (currently \$574 paid by insurers for each case that goes to formal hearing). The Division gets a General Fund appropriation and pays back the General Fund from its revenues.

The assessment rate is determined by dividing the total amount to be raised by the total amount of losses paid in the prior year by that particular category of employers (i.e., private insured, self-insured, group self-insured, public). The assessment rate for insured employers is applied to current manual premium, times an experience modification, and is separately stated on premium

notices. The assessment rate for self-insureds is applied to imputed premium times an experience modification factor.

The balance in the fund at the end of the fiscal year in excess of 35% of prior year expenditures must be used to reduce the next year's assessment. The Commission of the Industrial Accident Department/Division may make additional assessments during the year if necessary to gain sufficient revenue – the additional assessment is subject to approval of an advisory council and the Commissioner of the Department of Labor and Workforce Development.

Contact: Joan Endres, Accounting Division, 617-727-4900 x 232. www.state.ma.us/dia. According to Ms. Endres, the Division has not had trouble getting the necessary funds appropriated from the General Fund. The Division maintains up to a 35% reserve fund in case collections are too low. She said she doesn't think the insurers protest the referral fee; it gives incentive to settle at conciliation. The assessment is collected quarterly.

**IOWA
(CHAPTER 86)**

Administrative Structure
Department of Workforce Development
Division of Workers' Compensation

Funding Mechanism
General Fund

**NEW HAMPSHIRE
(NH STAT. 281-A: 59)**

Contact
Kathryn Barger, Director, Division of Workers' Comp
(603) 271-3599

Administrative Structure
Department of Labor
Division of Workers' Compensation

Funding Mechanism
Assessment of each insurer and self-insured employer on the basis of total workers comp benefits (including medical) paid in the FY ending in the prior calendar year. Total assessment cannot exceed the amount appropriated for the budget of the Division for the FY in which the assessment is made. The assessment must be reduced by the balance in the fund at the beginning of the new FY.

Kathryn Barger says that they have not had difficulty with assessment collections, and insurers do not appear to have complaints about collections based on prior year's benefits paid. The only

problem is when figures about past benefits are incorrect and the assessment amount has to be adjusted. Insurers that stop writing business in NH still have to pay on the basis of benefits payments, unless they are insolvent.

OREGON
(SECTION 656.612, .614)

Administrative Structure

Department of Consumer and Business Services
Workers' Compensation Division

Funding Mechanism

Assessment is collected from insurers on the basis of current direct earned premium and from self-insurers on the basis of direct earned premium that would have been paid had they been insured employers. Division director determines manner and interval for payments.

NEVADA
(SECTION 232.680)

Administrative Structure

Department of Business and Industry
Division of Industrial Relations

Funding Mechanism

Administrator divides the cost of programs among groups of employers (self-insured employers, self-insured groups, insured employers, etc.) who benefit from the program on the basis of expected annual claims expenditures.

Within each group, the administrator determines an assessment rate that:

(a) For insurers: Reflects the relative hazard of the jobs covered by the insurers, results in an equitable distribution of costs, and is based on expected annual premium;

(b) For self-insured employers and self-insured groups: Results in an equitable distribution of costs among self-insured employers and is based on expected annual expenditures for claims. Pursuant to rules adopted by the Administrator, "Expected annual expenditures" are generally calculated as the average of expenditures in prior 3 years.

The administrator adopts rules to implement the law.

MINNESOTA
(MINN. STAT. SECTION 176.129)

Administrative Structure

Department of Labor and Industry
Division of Workers' Compensation

Funding Mechanism

Amount needed is allocated among insureds and self-insured on the basis of paid indemnity losses in the prior calendar year. Among self-insureds, the assessment is allocated based on paid indemnity losses; Among insured employers, assessment is allocated on the basis of premium and collected through a policyholder surcharge

State agencies pay on a separate basis?

Half due by August 1; half by February 1.

WISCONSIN
(WIS. STAT. SECTION 102.75)

Administrative Structure

Department of Workforce Development
Workers' Compensation Division

Funding Mechanism

Funds are provided by insureds and self-insureds in proportion that the total indemnity benefits paid or payable in cases closed in the prior calendar year by that employer bears to the total indemnity benefits paid in cases closed in that calendar year.

Robert Conlin, Senior Staff Attorney for the Wisconsin Legislative Council, (608) 266-2298, says that the assessment and costs of administering the workers' comp system have not been a matter of controversy in recent years.

RHODE ISLAND
(RI STAT. SECTION 28-37-13)

Administrative Structure

Department of Labor and Training

Funding Mechanism

Assessment is 4-1/4% of gross premium paid during the preceding calendar year (insurers) or gross premium that would have been paid by self-insureds in preceding calendar year (or a different amount if certified by the Department). If the assessment rate for the current year is lower than the rate for the prior year, the insurer must reduce the employer's premium payment in a like amount or refund the difference to the employer.

TEXAS

CIVIL STATUTES, SECS. 8306-8309

Administrative Structure

Workers' Compensation Commission 6 members, appointed by the Governor; Staffed by Executive Director and staff

Funding Mechanism

Commission sets an assessment rate taking into account expenses, prior-year surplus or deficit, other revenue sources. Insurers apply the assessment rate to modified annual premium; self-insurers apply the same assessment rate to their "tax base" which equals the sum of liabilities incurred in the prior year and administrative costs in the prior year.

Any deficit in collections is covered by the General Fund; any excess collections go to the General Fund.

**VERMONT
(TITLE 21, CHAPTER 9, §601 ET SEQ.)**

Administrative Structure

Department of Labor and Industry

Funding Mechanism

The assessment rate applicable to insurers is set annually by the General Assembly (the Legislature). The rate is the budget approved by the General Assembly (in the prior year?) adjusted by the Department's projection for salary and benefits, minus the amount collected in the prior calendar year from self-insureds, adjusted by the surplus/deficit from the prior calendar year, divided by the total direct calendar year premium for the prior year.

(Amounts are currently set at .85% of direct calendar year premium for insureds, and 1% of losses for self-insureds)

Pros and Cons of Various Funding Mechanisms

Some Issues to Consider in Determining How to Fund the Workers' Compensation Board

Practical Issues

- Predictable revenue to the Board
- Sufficient revenue to the Board
- Predictable recovery from employers
- Administrative ease

Policy Issue: Who should bear the costs of administering the system?

- All taxpayers? (General Fund)
- All covered employees and their employers? (See New Mexico)
- All employers with covered employees? (Assessment based on premium)
- All employers whose workers suffered compensable injuries? (Assessment based on premium or benefits paid)

Funding Method	Pros	Cons	State Examples	Comments
GENERAL FUND	<p>Revenue is somewhat predictable, once appropriation is approved, but subject to budget cuts</p> <p>Spreads the cost to taxpayers, generally</p> <p>Easy to administer</p>	<p>Need to compete with other programs needing GF dollars</p> <p>No link to amount of size or usage of the system</p>	<p>California (before 2003, was 80% General Fund)</p> <p>Iowa</p> <p>Illinois</p> <p>No. & So. Carolina</p> <p>So. Dakota</p>	<p>WC agencies funded through the General Fund are usually located within a larger department</p> <p>Special tax/assessment may still apply to wc entities, but funds are not dedicated</p>

<p>ALL COVERED EMPLOYEES and THEIR EMPLOYERS</p>	<p>All potential users of the services of the administrative agency share the cost</p>	<p>Not based on amount of usage of the system Somewhat unpredictable</p>	<p>New Mexico (\$4 per covered e'ee quarterly, ½ pd by employer; ½ by employee)</p>	<p>Collected by the state tax entity, which takes a percentage of collections to cover collection costs</p>
<p>ASSESSMENT Specific dollar amount based on prior year premium</p>	<p>Predictable revenue to the Workers' Comp Board, b/c it's a specific dollar amount Easy to divide among insurers because prior-year premium levels are known Premiums presumably have some relationship to the number of employees, risk and injury rate</p>	<p>Insurers can't accurately spread the cost to employers, b/c it's not expressed as a percent of premium Insurers want assessment to show as a separate item on premium bills Changes in market can make current year payments unfair – insurer can have significant business one year, and less business in the year the assessment is collected</p>	<p>Rhode Island</p>	<p>Some states appear to allocate costs based on prior year premium, but allow insurers to collect it from current year policyholders.</p>
<p>ASSESSMENT Specific dollar amount based on prior year benefits paid (indemnity, medical, both)</p>	<p>Predictable revenue to the Workers' Comp Board (b/c it's a specific dollar amount) Easy to divide among insurers because prior-year benefits paid are known Makes employers/insurers with frequent losses pay for administration of system to deal</p>	<p>Same as for specific dollar amount based on premium (above) May impact an insurer's settlement process Payment of benefits does not necessarily equate with cost to the WCB (if employer pays without contesting</p>	<p>Minn (SI) – Indemnity benefits paid NH – All benefits Wisc. – Indemnity benefits paid or payable in cases closed in the prior year Maine (SI) – “aggregate</p>	

	with the losses	claims, less work for WCB)	benefits”	
ASSESSMENT Percentage of anticipated premium (or assumed premium for self-insureds)	Insurers can pass assessment directly to employers	Unpredictable revenue to the WCB	Minn (I) Oregon Vermont Texas Nevada Mass?	
USER FEE	Parties that use the system pay for it	Unpredictable revenue Unfair to impose costs on parties who have not intentionally chosen to become involved with the system	Massachusetts: insurers pay a referral fee for each case that doesn't settle at the conciliation stage); pays for a portion of the costs of the system	

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Appendix H

**Proposal to Change Assessment Process, submitted by Department of Professional and
Financial Regulation Commissioner Robert E. Murray, Jr.**

Appendix I

Description of the Assessment Calculation for FY 04