

**Testimony of the
Workers' Compensation Board**

**Before the
Joint Standing Committee on Appropriations and Financial Affairs
and the
Joint Standing Committee on Labor and Housing**

February 10, 2023

Good afternoon Senator Rotundo, Representative Sachs and members of the Joint Standing Committee on Appropriations and Financial Affairs and good afternoon Senator Tipping, Representative Roeder and members of the Joint Standing Committee on Labor and Housing. My name is John Rohde. I am the Executive Director of the Workers' Compensation Board. I am here today to testify in favor of the Board's portion of L.D. 258, the 2024-2025 Biennial Budget.

I. INTRODUCTION

The biennial budget advances the Governor's guiding belief that to build a stronger, more prosperous state where opportunity is available to all, we must invest in the infrastructure that supports the people of Maine, our greatest asset.

That is why this budget proposal strengthens the very things that Maine people rely on every day to succeed, building on the strong success of the currently enacted budget and the last legislative session to tackle Maine's greatest challenges.

We have governed cautiously and in a fiscally prudent way over the past four years, making sure that – even in the hardest of times during the pandemic – we lived within our means. This budget proposal continues that practice.

II. BACKGROUND

The Workers' Compensation Board is a quasi-independent state entity that is run by a seven-member board of directors. The board members are appointed by the Governor; three members represent management, three members represent labor and the seventh is the executive director.

The Board's budget is developed and approved by its seven-member board of directors. The board of directors, especially its budget subcommittee, worked diligently last summer to develop its fiscal years 2024-2025 biennial budget. The board's budget submission has two components: The spending request found on pages A-650 and A-651; and, language change found in Part UUU. The spending request for fiscal year 2024 is \$14,184,123 and for fiscal year 2025, is \$14,396,025. The language change increases the maximum assessment (referred to as the assessment cap) in 39-A M.R.S. § 154(6).

The Board reached consensus with respect to the spending request as well as the need to increase the assessment cap. Despite making a great deal of progress, the Board did not reach consensus with respect to how to address the assessment cap. As a result, the Board voted 4-3 to submit this budget plan.

III. PROGRAMS and INITIATIVES

The Board's budget is divided into three programs, each of which I will briefly summarize.

A. Administration – Workers' Compensation Board 0183 (p. A-650)

The first program, on page A-650, is Administration – 0183. This program funds the operations of the Workers' Compensation Board, including:

- 1. Administration:** The administration of the Board and its operations. This includes budget, legal, technology, regional office supervision, medical and rehabilitation services, claims management and coverage.
- 2. Dispute Resolution:** The Workers' Compensation Board has five regional offices (Augusta, Bangor, Caribou, Lewiston and Portland) where troubleshooting, mediation and formal hearings take place. Dispute resolution also includes the Board's Appellate Division which is authorized to hear and decide appeals from decisions issued by Administrative Law Judges (ALJs).
- 3. Monitoring Audit and Enforcement:** The Board monitors the timeliness with which certain forms and payments are being made; conducts compliance audits to ensure all obligations under the Workers' Compensation Act are met; and, provides assistance to employers, insurers, self-insured employers, claim adjusters, and third-party administrators. Through its Abuse Investigation Unit, the Board enforces the administrative penalty provisions of the Workers' Compensation Act.
- 4. Worker Advocates:** The Worker Advocate Program provides legal representation without cost to injured workers pursuing claims before the Workers' Compensation Board. In order for an injured worker to qualify for Advocate representation, the injury must have occurred on or after January 1, 1993; the worker must have participated in the Board's troubleshooter program; the worker must have failed to informally resolve the dispute; and finally, the worker must not have retained private legal counsel.

There is one initiative in this account which can be found on page A-650. The initiative re-aligns projected expenditures to more accurately reflect the Board's expenditure trends for statewide technology services and insurance coverage along with associated STA-CAP charges. The amounts are: \$68,831 in FY24 and \$73,393 in FY25.

B. Employment Rehabilitation Program – 0195 (p. A-651)

The second program, on page A-651, is the Employment Rehabilitation Program. The Employment Rehabilitation Program is mandated by statute and is used to make initial payments to ensure injured workers have access to employment rehabilitation services.

There are no initiatives for this program.

C. Workers' Compensation Board 0751 (p. A-651)

The third program funds the Workers' Compensation Board of Directors. The per diem and expenses of the 6 labor and management members are funded in this program and are set forth on page A-651.

There is one initiative for this program which can also be found on page A-651. This initiative increases funding for per diem expenses for the 6 labor and management members. This increase is a result of how hard, and well, the Board is working to achieve consensus on the issues that come before it. Building consensus takes time, commitment, and more meetings. This initiative funds the Board's ongoing efforts in this regard.

IV. LANGUAGE CHANGE -- PART UUU

The Board does not receive General Fund money. The Board's revenue is derived from an assessment on workers' compensation insurance and self-insured employers. When the Board submits its biennial budget, it must demonstrate that it has the authority to generate enough revenue to meet its projected expenditures.

The assessment cap in §154(6) establishes the Board's maximum revenue raising authority. If the assessment cap is equal to or higher than projected expenditures, the Board can demonstrate it will be able to generate enough revenue to meet those projected expenditures. If projected expenditures exceed the assessment cap, as is the case this year, the Board must account for the difference.

A little history about the assessment cap will provide helpful context. The assessment cap has been amended several times since the creation of the Board in 1993. The most recent amendment was enacted in 2016 when the assessment cap was raised to \$13,000,000 (the current cap) from \$11,200,000. That amendment was intended to cover four fiscal years, which it did. The Board was slated to address the assessment cap two years ago. Action was deferred due to concerns about changing the assessment cap at that point in the COVID-19 pandemic.

As I mentioned earlier, this past summer, the Board discussed the need to address the assessment cap. The discussions were positive and productive, and resulted in agreement that the assessment cap needs to increase. However, the discussions concluded before consensus could be reached on a specific plan.

The assessment cap must be addressed. Otherwise, the Board will have to make personnel or program cuts at odds with the Board's consensus regarding its spending request. As a result, the

language in Part UUU increases the assessment cap by an amount that is only intended to address the coming biennium. This language allows the Board to demonstrate that it will be able to generate sufficient revenue and gives the Board time to continue its discussions.

The last point I will address is an area of confusion that often arises when the Board discusses the assessment cap: Namely, whether increasing the assessment cap will directly affect assessments paid by employers. The short answer is that changes to the assessment cap do not directly affect assessments paid by employers. The slightly longer answer is that the assessment cap establishes the maximum amount the Board *can* assess – it does not establish the amount the Board *must* assess. In fact, for the last 24 fiscal years, the Board's annual assessment has always been below the statutory maximum.

Thank you for your time this afternoon. I am happy to answer any questions.