

SB 77-FN – AS INTRODUCED

2011 SESSION

11-0778

01/04

SENATE BILL **77-FN**

AN ACT relative to the special fund for payment for second injuries under workers' compensation law.

SPONSORS: Sen. Sanborn, Dist 7; Sen. White, Dist 9; Sen. Bradley, Dist 3; Rep. T. Keane, Merr 13; Rep. Cohn, Merr 6; Rep. Kreis, Merr 6

COMMITTEE: Commerce

ANALYSIS

This bill clarifies when payments are to be made from the special fund for second injuries under workers' compensation law. This bill establishes a special fund review board to hear appeals from the commissioner of labor's actions regarding requests for reimbursement from the special fund.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the special fund for payment for second injuries under workers' compensation law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Workers' Compensation; Definitions. Amend RSA 281-A:2, XIV to read as follows:

2 XIV. "Permanent physical or mental impairment," as used in RSA 281-A:54, means any
3 permanent condition that is congenital or due to injury or disease~~[and that is of such seriousness as~~
4 ~~to constitute a hindrance or obstacle to obtaining employment or to obtaining employment if the~~
5 ~~employee should become unemployed].~~

6 2 Workers' Compensation; Payment for Second Injuries From Special Fund. Amend RSA 281-
7 A:54, III to read as follows:

8 III. In order to qualify under this section for reimbursement from the special fund, an
9 employer shall establish:

10 (a) By written records, or by affidavit ~~[executed at the time of hire or retention in~~
11 ~~employment,]~~ that the employer had knowledge of the employee's ~~[permanent]~~ physical or mental
12 impairment at the time that the employee was hired or at the time that the employee was retained
13 in employment after the employer acquired such knowledge; **and**

14 (b) ***By a medical assessment procured by the employer or the employer's insurer***
15 ***of the preexisting permanent physical or mental impairment prior to submission for***
16 ***reimbursement from the special fund. Specific physical or other limitations resulting from***
17 ***such preexisting permanent physical or mental impairment need only be addressed as part***
18 ***of such medical assessment.***

19 3 New Section; Special Fund Review Board; Appeals Process. Amend RSA 281-A by inserting
20 after section 54 the following new section:

21 281-A:54-a Special Fund Review Board; Appeal Process.

22 I. There is hereby established a special fund review board for the purpose of considering and
23 ruling upon any appeal of the commissioner's action with respect to a request for reimbursement
24 under RSA 281-A:54. The board shall have exclusive initial jurisdiction over any such appeals,
25 which shall be considered and heard by the board de novo. The board shall consist of 5 members,
26 each with experience in workers' compensation claims, insurance, or administration, and shall
27 include:

28 (a) A level II workers' compensation administrator from the commissioner's office.

29 (b) A representative from the workers' compensation commercial insurance carrier
30 industry.

1 (c) A representative from the workers' compensation self insurance group trusts or self-
2 insured employers.

3 (d) A physician or other health care professional.

4 (e) A New Hampshire attorney.

5 II. The governor and council shall consider and appoint members of the board as
6 recommended by the compensation appeals advisory board established under RSA 281-A:42-aa. The
7 term of office for each member of the board shall be 3 years, provided, however that of the members
8 initially appointed, one shall be appointed for a term of one year, 2 shall be appointed for 2 years,
9 and 2 shall be appointed for 3 years. Three members shall constitute a quorum for conducting
10 business. No member shall serve for more than 2 consecutive terms. Board members shall be
11 compensated at the rate of \$200 per diem for each day devoted to the work of the board, to be paid
12 from the special fund. Meeting and office space shall be provided by the commissioner, with any
13 necessary costs for administrative support, transcription, or other hearing expenses also paid from
14 the special fund.

15 II. Appeals of any decision with respect to a reimbursement request under RSA 281-A:54
16 shall be submitted to the board within 30 calendar days following the date on the commissioner's
17 written notice of the action appealed from, and the board shall render a written ruling or decision
18 within 30 calendar days of the close of the record of any such appeal or hearing thereon. The board
19 shall meet as necessary for timely disposition of all appeals, and shall conduct proceedings in such a
20 manner as to ensure a fair and impartial consideration of written materials and matters presented
21 at any hearing the board may require.

22 III. The board shall develop appeal submission and hearing procedures, which the
23 commissioner shall adopt as rules in accordance with RSA 541-A, consistent with those utilized by
24 the compensation appeals board established under RSA 281-A:42-a.

25 IV. Decisions of the board shall be reviewable only by the New Hampshire supreme court.

26 4 New Subparagraph; Workers' Compensation; Compensation Appeals Board. Amend RSA 281-
27 A:42-aa, IV by inserting after subparagraph (d) the following new subparagraph:

28 (e) Consider applications or nominations for the special fund review board, established
29 under RSA 281-A:54-a, and designate proposed members of such board for consideration and
30 approval by the governor and council.

31 5 Effective Date. This act shall take effect upon its passage.

LBAO
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02/02/11

SB 77-FN - FISCAL NOTE

AN ACT relative to the special fund for payment for second injuries under workers' compensation law.

FISCAL IMPACT:

The Department of Labor states the fiscal impact of this bill on state, county and local expenditures and revenue is indeterminable in FY 2011 and each year thereafter.

METHODOLOGY:

The Department of Labor states this bill clarifies when payments are to be made from the special fund for second injuries under the workers' compensation law and establishes a special fund review board to hear appeals related to the Department's actions regarding requests for reimbursement from the special fund. The Department states it does not have the information necessary to determine the fiscal impact of this bill on state, county, local expenditures or revenue.