

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1464

6  
7 S.P. 482

In Senate, April 13, 1983

8 Submitted by the Department of Finance and Administration pursuant to  
9 Joint Rule 24.

10 Referred to the Committee on Business Legislation. Sent down for  
concurrency and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Dow of Kennebec.

Cosponsor: Representative Cashman of Old Town.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Restructure Maine's Insurance  
18 Management Program.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 Sec. 1. 2 MRSA §6, sub-§5, as repealed and  
23 replaced by PL 1981, c. 705, Pt. L, §§1-3, is  
24 repealed and the following enacted in its place:

25 5. Range 86. The salaries of the following  
26 state officials and employees shall be within the  
27 salary range 86:

28 Director of Labor Standards;

29 Deputy Chief of the State Police;

30 Director of State Lotteries;

- 1        State Archivist;
- 2        Director of Maine Geological Survey;
- 3        Executive Director, Maine Land Use Regulation
- 4        Commission;
- 5        Chairman, Maine Employment Security Commission;
- 6        and
- 7        Director of the Risk Management Division.

8        **Sec. 2. 5 MRSA §711, sub-§2, ¶A, as amended by**  
9        **PL 1981, c. 708, §§1-3, is further amended to read:**

10        A. The following positions in the following  
11        departments are major policy-influencing posi-  
12        tions. These positions and their successor posi-  
13        tions shall be subject to this subsection, not-  
14        withstanding any other provision of law:

- 15                (1) Department of the Attorney General:
  - 16                        (a) Deputy Attorneys General; and
  - 17                        (b) Assistant Attorneys General-;
- 18                (1-A) Department of Agriculture, Food and  
19                Rural Resources:
  - 20                        (a) Deputy commissioners;
  - 21                        (b) Associate Commissioner for Policy  
22                        Development;
  - 23                        (c) Director, Bureau of Agricultural  
24                        Productions;
  - 25                        (d) Director, Bureau of Agricultural  
26                        Marketing;
  - 27                        (e) Director, Bureau of Agricultural  
28                        and Rural Resources; and
  - 29                        (f) Director, Bureau of Public Ser-  
30                        vices-;

- 1 (2) Department of Business Regulation:
- 2 (a) Superintendent, Bureau of Banking;
- 3 (b) Superintendent, Bureau of Consumer
- 4 Credit Protection; and
- 5 (c) Superintendent, Bureau of Insur-
- 6 ance-; i
- 7 (3) Department of Conservation:
- 8 (a) Director, Administrative Services;
- 9 (b) Director, Planning and Program
- 10 Services;
- 11 (c) Director, Bureau of Forestry;
- 12 (d) Director, Maine Geological Survey;
- 13 (e) Executive Director, Maine Land Use
- 14 Regulation Commission;
- 15 (f) Director, Bureau of Parks and
- 16 Recreation;
- 17 (g) Director, Bureau of Public Lands;
- 18 and
- 19 (h) Forest Insect Manager, Bureau of
- 20 Forestry-; i
- 21 (4) Department of Educational and Cultural
- 22 Services:
- 23 (a) Assistant to the commissioner;
- 24 (b) Deputy Commissioner;
- 25 (c) Associate Commissioner, Bureau of
- 26 School Management;
- 27 (d) Associate Commissioner, Bureau of
- 28 Instruction; and
- 29 (e) Associate Commissioner, Bureau of
- 30 Vocational Education-; i

1 (5) Department of Finance and Administra-  
2 tion:

3 (a) State Controller;

4 (b) State Purchasing Agent;

5 (c) State Tax Assessor;

6 (d) Director, Bureau of Public  
7 Improvements;

8 (e) Director, Bureau of Alcoholic Bev-  
9 erages; and

10 (f) State Budget Officer; and

11 (g) Director, Risk Management Divi-  
12 sion;

13 (6) Department of Human Services:

14 (a) Deputy Commissioners;

15 (b) Director, Bureau of Maine's  
16 Elderly;

17 (c) Director, Bureau of Resource  
18 Development;

19 (d) Director, Bureau of Health;

20 (e) Director, Bureau of Rehabilita-  
21 tion;

22 (f) Director, Bureau of Income Mainte-  
23 nance;

24 (g) Director, State Health Planning  
25 and Development Agency; and

26 (h) Director, Bureau of Medical Ser-  
27 vices; and

28 (7) Maine Human Rights Commission:

29 (a) Executive Director; and

1 (b) Chief Compliance Officer-; i  
2 (8) Department of Indian Affairs:  
3 (a) Deputy Commissioner-; i  
4 (9) Department of Inland Fisheries and  
5 Wildlife:  
6 (a) Deputy Commissioner-; i  
7 (10) Maine State Lottery Commission:  
8 (a) Deputy Director-; i  
9 (11) Department of Labor:  
10 (a) Director, Manpower Training Divi-  
11 sion;  
12 (b) Director, Bureau of Labor Stan-  
13 dards; and  
14 (c) Executive Director, Maine Labor  
15 Relations Board-; i  
16 (12) Department of Marine Resources:  
17 (a) Deputy Commissioner-; i  
18 (13) Department of Mental Health and Mental  
19 Retardation:  
20 (a) Associate Commissioner;  
21 (b) Director, Bureau of Mental Health;  
22 (c) Superintendent, Augusta Mental  
23 Health Institute;  
24 (d) Superintendent, Bangor Mental  
25 Health Institute;  
26 (e) Director, Bureau of Mental Retar-  
27 dation;  
28 (f) Superintendent, Pineland Center;  
29 and

1 (g) Director, Bureau of Corrections;  
2 (14) Department of Defense and Veterans  
3 Services:  
4 (a) Deputy Adjutant General;  
5 (b) Director, Bureau of Civil Emer-  
6 gency Preparedness; and  
7 (c) Director, Bureau of Veterans Ser-  
8 vices;  
9 (15) Department of Public Safety:  
10 (a) Chief, Bureau of State Police;  
11 (b) Director, Bureau of Liquor  
12 Enforcement;  
13 (c) Director, Office of State Fire  
14 Marshal; and  
15 (d) Director, Maine Criminal Justice  
16 Academy;  
17 (16) Department of Secretary of State:  
18 (a) Deputy Secretaries of State; and  
19 (b) State Archivist; and  
20 (17) Department of Transportation:  
21 (a) Deputy Commissioners; and  
22 (b) Chief Counsel, Bureau of Legal  
23 Services.  
24 Sec. 3. 5 MRSA §1725, as enacted by PL 1971, c.  
25 239, §2, is repealed.  
26 Sec. 4. 5 MRSA §1725-A is enacted to read:  
27 §1725-A. Risk Management Division

1           1. Creation and authority. The Department of  
2 Finance and Administration is designated as the  
3 agency through which this chapter shall be adminis-  
4 tered and the Commissioner of Finance and Administra-  
5 tion, in this chapter called the "commissioner," is  
6 empowered with such authority as may be necessary to  
7 carry out its purposes.

8           There is created within the Department of Finance and  
9 Administration a Risk Management Division, in this  
10 chapter called the "division." The division shall be  
11 under the administrative control of the commissioner  
12 and under the direct supervision of the Director of  
13 Risk Management.

14           2. Director of Risk Management. The commis-  
15 sioner shall appoint a Director of Risk Management,  
16 in this chapter called the "director," to administer  
17 the state's policy on insurance management, as devel-  
18 oped through the authority of this chapter. The  
19 director shall serve at the pleasure of the commis-  
20 sioner and shall be knowledgeable of insurance prac-  
21 tices and principles and shall be qualified by actual  
22 experience in the field of risk management to carry  
23 out the purposes of this chapter. The director shall  
24 receive compensation as determined pursuant to Title  
25 2, section 6, subsection 5.

26           3. Personnel. The director may employ such  
27 assistants and employees as are necessary, and dis-  
28 tribute the duties assigned to the division among  
29 such persons as he deems necessary for economy and  
30 efficiency of administration. Professional employees  
31 shall be hired as unclassified employees. All other  
32 employees shall be subject to the Personnel Law.

33           Sec. 5. 5 MRSA §1726, as amended by PL 1971, c.  
34 622, §17, is repealed.

35           Sec. 6. 5 MRSA §1727, as enacted by PL 1971, c.  
36 239, §2, is repealed.

37           Sec. 7. 5 MRSA §1727-A is enacted to read:  
38 §1727-A. Conflict of interest prohibited



1       The director or any other employee of the divi-  
2 sion shall not be financially interested, directly or  
3 indirectly, in any insurer, agency or insurance  
4 transaction, except as a policyholder or claimant  
5 under a policy, nor shall the director or any other  
6 employee be licensed under Title 24-A, as an agent,  
7 broker, consultant or adjuster.

8       Sec. 8. 5 MRSA §1728, as amended by PL 1979, c.  
9 14, is repealed.

10       Sec. 9. 5 MRSA §1728-A is enacted to read:

11       §1728-A. Powers and duties of the director

12       1. Duties. The director shall provide insurance  
13 advice and services for the State Government and any  
14 department or agency thereof for all forms of insur-  
15 ance, except for those departments or agencies and  
16 those types of insurance otherwise provided for by  
17 law. The director shall be responsible for the ac-  
18 quisition and administration of all insurance pur-  
19 chased by the State, including the authority to pur-  
20 chase, on a competitive bid basis, insurance for the  
21 State for automobile, fire, liability and any other  
22 type of coverage which may be necessary to protect  
23 the State from financial loss. The director may  
24 enter into contracts for various types of claims man-  
25 agement services in order to insure the most economi-  
26 cally advantageous insurance protection in the opera-  
27 tion of the state's insurance coverage program. In  
28 these regards, the director has the following duties:

29       A. To review annually the entire subject of  
30 insurance as it applies to all state property and  
31 activities, and to provide to the commissioner a  
32 statement of its activities during the year  
33 ending the preceding June 30th. This report  
34 shall include:

35       (1) An evaluation of the state insurance  
36 program;

37       (2) A complete statement of all types and  
38 costs of insurance in effect;

39       (3) Names of agents and companies of  
40 record; and

1. (4) Such other matters as the director  
2 determines to be appropriate and necessary  
3 or as the commissioner may request;

4 B. To recommend to the commissioner such insur-  
5 ance protection as the director may deem neces-  
6 sary or desirable for the protection of all state  
7 property or activities;

8 C. Pursuant to programs approved by the commis-  
9 sioner, to provide insurance protection for state  
10 property and liability insurance in accordance  
11 with the Maine Tort Claims Act, Title 14, section  
12 8116, and premises liability, when required by a  
13 state lease or private property approved by the  
14 Attorney General, by self-insured retention, as  
15 provided, or purchase of insurance from companies  
16 or agents licensed to do business in this State,  
17 or by both, to effect the best possible contracts  
18 as to services, coverages and costs. The pur-  
19 chase of insurance under this section normally  
20 shall be made upon competitive bidding, except  
21 that the director may, in appropriate circum-  
22 stances, purchase insurance by negotiation.

23 In the event of the purchase of insurance upon  
24 competitive bidding by qualified insurers, the  
25 director shall announce the low bid at a meeting  
26 advertised for the opening of bids, which, when  
27 approved by the commissioner, shall constitute an  
28 award of a contract of insurance;

29 D. To determine and review the values of prop-  
30 erty in which the State has an insurable or legal  
31 interest and recommend limits and types of insur-  
32 ance protection for that property;

33 E. To establish and promote safety and other  
34 loss prevention programs;

35 F. To receive and, with the assistance of the  
36 Attorney General, administer all claims for per-  
37 sonal injury and property damage against the  
38 State; and

39 G. With the assistance of the Attorney General,  
40 to pursue all claims against 3rd parties in all

1 cases in which the State may be subrogated to the  
2 rights of injured employees or where damage to  
3 state property may have resulted from the negli-  
4 gence of a 3rd party.

5 2. Appraisal. In case an agreement as to the  
6 amount of loss sustained to any building or property  
7 insured under this chapter cannot be arrived at  
8 between the state agency claimant and the director,  
9 the loss shall be referred to appraisal as provided  
10 for in Title 24-A, section 3002.

11 3. Rejection of risk. In the event that the  
12 director determines that a risk may be prejudicial to  
13 the state's insurance program, he may refuse to  
14 include that risk in the program until such time as  
15 hazards of the risk have been removed or ameliorated  
16 to a satisfactory degree.

17 When coverage is declined by the director, the  
18 department or agency in charge of the risk may  
19 request that the director procure separate insurance  
20 thereon from any authorized insurance company, and  
21 the premium therefor shall be a proper charge against  
22 the department or agency responsible for the prop-  
23 erty.

24 4. Forms and rules. The director may prescribe  
25 forms of policies, proofs of losses and other forms  
26 and make such rules as may be necessary or expedient  
27 for the proper administration of this chapter.

28 Sec. 10. 5 MRSA §1729, as enacted by PL 1971, c.  
29 239, §2, is repealed.

30 Sec. 11. 5 MRSA §1730, as enacted by PL 1971, c.  
31 239, §2, is amended to read:

32 §1730. Records; audit

33 The board division shall keep a record of all its  
34 proceedings and expenditures of the board, attested  
35 by affidavits of its chairman and secretary.

36 The board division shall have an audit made of  
37 its accounts annually covering the last complete  
38 fiscal year by the Department of Audit.

1           The policies for all insurance placed shall be  
2 kept on file with the board division.

3           Sec. 12. 5 MRSA §1731, as enacted by PL 1971, c.  
4 239, §2, is amended to read:

5           §1731. Reserve fund for self-insured retention  
6           losses

7           A reserve fund, ~~hereinafter~~ in this chapter  
8 called "the fund," is created to indemnify the State  
9 for self-insured retention losses and related loss  
10 adjustment expenses from those perils insured against  
11 under a deductible or self-insured retention program,  
12 as recommended by the board director and approved by  
13 the Governor commissioner. The fund shall be a con-  
14 tinuing fund and shall not lapse.

15           Sec. 13. 5 MRSA §1731-A, 2nd ¶, as enacted by PL  
16 1971, c. 239, §2, is amended to read:

17           The board director may ~~recomm~~ recomm ~~to the Governor~~  
18 purchase such reinsurance of the deductible or  
19 self-insured retentions hereunder as ~~the board he~~ may  
20 deem necessary or desirable, ~~and pursuant to pro-~~  
21 grams approved by the Governor; the board ~~The direc-~~  
22 tor may purchase such reinsurance protection from  
23 companies or agents licensed or approved by the  
24 Superintendent of Insurance to do business in the  
25 State of Maine.

26           Sec. 14. 5 MRSA §1732, as enacted by PL 1971, c.  
27 239, §2, is amended to read:

28           §1732. Administration

29           The fund shall be administered by the Commis-  
30 sioner of Finance and Administration. ~~Subject to the~~  
31 ~~approval of the board; the~~ The commissioner of  
32 Finance and Administration shall deposit the fund  
33 with the Treasurer of State for investment. All pro-  
34 ceeds of such investment shall accrue to the fund.

35           Sec. 15. 5 MRSA §1733, 3rd ¶, as enacted by PL  
36 1971, c. 239, §2, is amended to read:

1 All other state departments and agencies, except  
2 those specifically excluded by statute, shall pay to  
3 the fund premiums on a pro rata basis as determined  
4 by the board director, not to exceed in each case an  
5 amount equal to the difference between the premium  
6 for insurance proposed to be purchased and the pre-  
7 mium for mandatory deductible or full insurance cov-  
8 erage plus a pro-rata share of the cost of the  
9 step-less insurance and based upon the prior claims  
10 experience of the departments or agencies. In any  
11 instance in which the State has a 100% self-insured  
12 retention, the premium shall be that for full insur-  
13 ance coverage adjusted for any mandatory deductible.

14 Sec. 16. 5 MRSA §1734, first ¶, as enacted by PL  
15 1971, c. 239, §2, is amended to read:

16 The fund shall not exceed 2% of the then current  
17 value of all state-insured or self-insured retention  
18 property protected by the fund as determined by the  
19 board director.

20 Sec. 17. 5 MRSA §1735, as amended by PL 1971, c.  
21 622, §17-A, is further amended to read:

22 §1735. Depletion of fund

23 In the event that payments from the fund should  
24 reduce it below \$1,000,000, the board commissioner  
25 shall recommend to the Legislature that funds be  
26 appropriated to restore the fund up to the maximum  
27 amount it had previously attained.

28 Sec. 18. 5 MRSA §1736, first ¶, as enacted by PL  
29 1971, c. 239, §2, is amended to read:

30 Pursuant to the recommendation of the board  
31 director, the commissioner of Finance and Administra-  
32 tion shall cause payments from the fund or proceeds  
33 of insurance purchased in accordance with this chap-  
34 ter, or both, to be made available for repair or re-  
35 placement of insured property and payment of losses  
36 and loss adjustment expenses.

37 Sec. 19. Funding. In order to carry out the  
38 purposes of this Act, all equipment and supplies of  
39 the Maine Insurance Advisory Board shall be trans-

