

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2436

S. P. 871

In Senate, January 24, 1974

Referred to Committee on Business Legislation. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator MacLeod of Penobscot, **BY REQUEST.**

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Relating to the Maine Insurance Advisory Board.

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

Sec. 1. R. S., T. 5, § 285, sub-§ 8, additional. Section 285 of Title 5 of the Revised Statutes, as enacted by chapter 543 of the public laws of 1967 and as amended, is further amended by adding a new subsection 8 to read as follows:

8. Intent to negotiate. The board of trustees shall advise the representative of the Bureau of Insurance Management of its intent to negotiate or renegotiate any policy and shall supply him with related information.

Sec. 2. R. S., T. 5, § 1125, sub-§ 5, additional. Section 1125 of Title 5 of the Revised Statutes, as amended, is further amended by adding a new subsection 5 to read as follows:

5. Intent to negotiate. The board of trustees shall advise the representative of the Bureau of Insurance Management of its intent to negotiate or renegotiate any policy and shall supply him with related information.

Sec. 3. R. S., T. 5, § 1725, repealed and replaced. Section 1725 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is repealed and the following enacted in place thereof:

§ 1725. Bureau of Insurance Management

There is created and established a Bureau of Insurance Management, hereinafter called the bureau, which shall provide advice under this chapter.

The Director of the Bureau of Insurance Management shall be appointed by the Commissioner of Finance and Administration, subject to approval of the Governor and Council, to serve at his pleasure.

The director of the bureau shall be paid a salary pursuant to Title 2, section 6, subsection 3.

Sec. 4. R. S., T. 5, § 1726, repealed. Section 1726 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971 and as amended, is repealed.

Sec. 5. R. S., T. 5, § 1727, amended. Section 1727 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is amended to read as follows:

§ 1727. Personnel; selection; duties

~~The Board shall employ an executive secretary who has~~ **The director shall have a comprehensive knowledge of insurance practices and principles and who shall administer the duties imposed by this chapter with the advice of the board.** ~~The executive secretary~~ **director shall be an employee of the State and shall be subject to the provisions of the Personnel Law.**

~~The executive secretary director shall assist the board in the discharge of its duties and assist~~ in the preparation of the invitations for bids as authorized by section 1728.

Sec. 6. R. S., T. 5, § 1728, amended. Section 1728 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is amended to read as follows:

§ 1728. Powers and duties of the bureau

~~The board~~ **bureau shall provide insurance advice and services for the State Government and any department or agency thereof for all forms of insurance, except for those departments or agencies and those types of insurance otherwise provided for by law. In this regard the board **bureau shall have the following duties.****

1. Annual reports. Review annually the entire subject of insurance as it applies to all state property and activities, and report to the Governor and the Commissioner of Finance and Administration a statement of its activities during the year ended the preceding June 30th. This report shall include:

- A.** An evaluation of the state insurance program;
- B.** A complete statement of all types and costs of insurance in effect;
- C.** Names of agents and companies of record;
- D.** Such other matters as the ~~board~~ **bureau determines to be appropriate and necessary or as the Governor may request.**

2. Recommendations. Recommend to the Governor such insurance protection as the ~~board~~ **bureau may deem to be necessary or desirable for the protection of all state property.**

3. **Purchase of insurance.** Pursuant to programs approved by the Governor, provide insurance protection for state property by self-insured retention as provided or purchase of insurance from companies or agents licensed to do business in the State of Maine, or by both, to effect the best possible contracts as to services, coverages and costs. The purchase of insurance under this section normally shall be made upon competitive bidding, except that the ~~board~~ bureau may in appropriate circumstances purchase insurance by negotiation.

In the event of the purchase of insurance upon competitive bidding, the ~~chairman of the board~~ director shall announce the low bid at a meeting advertised for the opening of bids, which, when approved by the Governor, shall constitute an award of a contract of insurance.

4. **Schedules of state property.** Determine and review the values of property in which the State has an insurable or legal interest and recommend limits and types of insurance protection for such property.

5. **Loss prevention practices.** Recommend sound safety engineering and loss prevention practices.

6. **Appraisal.** In case an agreement as to the amount of loss sustained to any building or property insured under this chapter cannot be arrived at between the state agency claimant and the ~~board~~ bureau, such loss shall be referred to appraisal as provided for in Title 24-A, section 3002.

7. **Rejection of risk.** In the event that the ~~board by unanimous vote~~ bureau determines that a risk may be prejudicial to the state's insurance program, it may refuse to include such risk in said program until such time as hazards of the risk have been removed or ameliorated to a satisfactory degree.

When coverage is declined by the ~~board~~ bureau, the department or agency in charge of the risk may request that the ~~board~~ bureau procure separate insurance thereon from any authorized insurance company, and the premium therefor shall be a proper charge against the department or agency responsible for such property.

8. **Rules and regulations** The ~~board~~ bureau shall, in accordance with the spirit and intent of the law, make such rules and regulations as may be desirable or necessary for the performance of its duties, and for carrying out the purpose of this chapter.

Sec. 7. R. S., T. 5, § 1729, repealed. Section 1729 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is repealed.

Sec. 8. R. S., T. 5, § 1730, amended. Section 1730 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is amended to read as follows:

§ 1730. **Records; audit**

The ~~board~~ bureau shall keep a record of all its proceedings and expenditures ~~of the board, attested by affidavits of its chairman and secretary.~~

The ~~board~~ bureau shall have an audit made of its accounts annually covering the last complete fiscal year by the Department of Audit.

The policies for all insurance placed shall be kept on file with the ~~board~~ bureau.

Sec. 9. R. S., T. 5, § 1731, amended. Section 1731 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is amended to read as follows:

§ 1731. Reserve fund for self-insured retention losses

A reserve fund, hereinafter in this chapter called "the fund," is created to indemnify the State for self-insured retention losses and related loss adjustment expenses from those perils insured against under a deductible or self-insured retention program, as recommended by the ~~board~~ bureau and approved by the Governor. The fund shall be a continuing fund and shall not lapse.

Sec. 10. R. S., T. 5, § 1731-A, amended. Section 1731-A of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is amended to read as follows:

§ 1731-A. Provision for stop-loss insurance

~~Deductible or self-insured retention provisions hereunder shall not exceed \$500,000 per occurrence with respect to any risk of loss~~

The ~~board~~ bureau may recommend to the Governor such reinsurance of the deductible or self-insured retentions hereunder as the ~~board~~ bureau may deem necessary or desirable; and pursuant to programs approved by the Governor, the ~~board~~ bureau may purchase such reinsurance protection from companies or agents licensed to do business in the State of Maine.

Sec. 11. R. S., T. 5, § 1732, amended. Section 1732 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is amended to read as follows:

§ 1732. Administration

The fund shall be administered by the Commissioner of Finance and Administration ~~Subject to the approval of the board, the Commissioner of Finance and Administration~~ who shall deposit the fund with the Treasurer of State for investment. All proceeds of such investment shall accrue to the fund.

Sec. 12. R. S., T. 5, § 1734, amended. The first paragraph of section 1734 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971, is amended to read as follows:

The fund shall not exceed 2% of the then current value of all state-insured or self-insured retention property protected by the fund as determined by the ~~board~~ bureau.

Sec. 13. R. S., T. 5, § 1735, amended. Section 1735 of Title 5 of the Revised Statutes, as enacted by section 2 of chapter 239 of the public laws of 1971 and as amended, is further amended to read as follows:

§ 1735. Depletion of fund

In the event that payments from the fund should reduce it below \$1,000,000, the ~~board~~ bureau shall recommend to the legislature that funds be appropriated to restore the fund up to the maximum amount it had previously attained.

Sec. 14. R. S., T. 5, §§ 1737 - 1740-Q, additional. Title 5 of the Revised Statutes is amended by adding 21 new sections, 1737 to 1740-Q, to read as follows:

§ 1737. Workmen's compensation and occupational disease, self-insurance program for state employees

The bureau shall provide all administrative services including claims supervision in connection with work related injuries and occupational disease of the state employees under the Workmen's Compensation and Occupational Diseases Act.

The Attorney General shall provide legal services and advice to the bureau and shall act as attorney for the State in connection with such claim.

§ 1738. Health, accident and group life insurance

The Director of the Bureau of Insurance Management shall represent the Commissioner of Finance and Administration at such time as the Board of Trustees of the Maine State Retirement System negotiates or renegotiates state group life insurance with underwriters of such policies. The director shall periodically be provided a report reflecting the financial status of each of the programs.

§ 1739. State Claims Commission; definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. **Administrative hearings.** Claims for which an administrative hearing procedure otherwise is established by law;
2. **Claim.** "Claim" means a petition for the payment or refund of money by the state;
3. **Insurance.** Claims arising from acts or occurrences with respect to which a state agency is covered by liability insurance;
4. **Person.** "Person" means any individual, firm, partnership, corporation, association or other group including political subdivisions of the State;
5. **State agency.** "State agency" includes every department, bureau, division, board, office, commission, agency and institution of the State Government, whatever its title or function;

6. State officer and employee. "State officer and employee" includes every person elected or appointed to, or employed in any office, position or post, in the State Government, whatever his title, classification or function;

7. Suits. Claims upon which suit otherwise is authorized by law;

8. Taxes. Claims for the refund of taxes.

§ 1740. State Claims Commission; excepted claims

The State Claims Commission, established by this chapter, hereinafter called the "commission" shall hear and determine all claims against the State, except:

1. Disability. Claims for the periodic payment of disability pension, retirement, workmen's compensation or other employment benefits.

§ 1740-A. Appointment, removal, compensation of commission

The commission shall be composed of 3 members, residents of the State, who shall be appointed by the Governor, as follows: The initial appointments shall be one member for a term of 2 years, one member for a term of 3 years, one member for a term of 5 years and until their successors are duly appointed and qualified. Appointment thereafter shall be for terms of 5 years and until their successors are duly appointed and qualified. Of the members appointed, one shall be attorney licensed to practice law in this State, who shall be the chairman of the commission. The Governor may remove any member for incompetence, misconduct or material neglect of duty.

The members of the commission shall receive as compensation for their services \$50 a day for the time actually spent in the discharge of their duties, and shall be reimbursed for necessary expenses incurred in the discharge of their duties at the same rates as would apply to employees of the State of Maine. Compensation of commission members and their expenses shall be paid pro rata from appropriations to the state agencies against which claims are brought and are acted upon in any way by the commission.

§ 1740-B. Chairman; office

The chairman shall be the presiding officer of the commission. The Director of the Bureau of Insurance Management shall be the executive secretary of the commission. The executive secretary shall be responsible for carrying out the administration duties of the commission imposed by this chapter, with the advice of the commission. The executive secretary shall be the clerk of the commission.

§ 1740-C. Quorum; all members to participate in claim disposition

Two members of the commission shall constitute a quorum to do business, but all members shall participate in the disposition of each claim and any member absent during the hearing of a claim shall study the evidence adduced at such hearing.

§ 1740-D. Notice of claim

Any person presenting a claim against the State shall file with the office of the commission a notice of claim, in triplicate, containing the following information:

1. Names and addresses. The name and address of the claimant; the name and address of his principal, if the claimant is acting in a representative capacity, and the name and address of his attorney, if the claimant is so represented;
2. Basis of claim. A concise statement of the basis of the claim, including the date, time, place and circumstances of the act or event complained of;
3. Amount. A statement of the amount demanded.

The commission shall cause a copy of a notice of the claim to be forwarded promptly to the Attorney General. The notice shall be for informational purposes only and shall not be subject to any formal or technical requirements, except as may be necessary for clarity of presentation and facility of understanding.

§ 1740-E. Limitation on presentation of claim

No claim shall be presented under this chapter beyond 3 years after it accrues. Claims for injury to person or damage to property shall be deemed to accrue on the date when the damage or injury is discovered, or in the exercise of reasonable care should have been discovered. No claim cognizable by the commission shall be presented against the State except under this chapter. Except as provided in section 1740-M, no claim once considered by the State Claim Commission, by the Legislature or in a judicial proceeding shall again be presented against the State in any manner.

§ 1740-F. Attorney General

The Attorney General shall represent the state agency against which a claim is filed before the commission. When the Attorney General opposes a claim he shall file with the commission a notice of opposition, in triplicate, containing a concise statement of his objections. He shall promptly forward a copy of the notice of opposition to the claimant.

§ 1740-G. Service on or delivery to commission of subpoenas and papers

Any subpoena or other paper required to be served upon or delivered to the commission or to any person or official may be served or delivered in person or by certified mail. Service or delivery by certified mail shall be deemed complete upon the certification and deposit of such subpoena or paper at a United States post office. Proof of deposit and the return receipt shall be sufficient proof of service or delivery.

Any such service or delivery required between the commission and any state agency or any state officer or employee may be made through the inter-departmental mailing system of the State, provided reasonable means are taken to ascertain that the subpoena or paper was received by the addressee.

§ 1740-H. Hearings

Claims shall be heard as soon as practicable after they are filed. Hearings may be held at the office of the commission, at any available hearing facility in the State Capitol or State Office Building, upon request at any county courthouse in the State Capitol or State Office Building, upon request at any county courthouse in the State or at such other suitable place as the commission finds convenient and just to the claimant and to the state agency.

The commission may call witnesses, require information not offered by the claimant or the state agency and stipulate matters to be argued. Any member may examine any witness. The commission shall not be bound by any law or rule of evidence, except as it may provide by its rules.

Any member of the commission may administer oaths, cause depositions to be taken, issue subpoenas and order inspection and disclosure of books, papers, records and documents. Upon good cause shown, any such order or subpoena may be quashed by the commission or by the member who issued it.

If any person fails to respond to a subpoena, the chairman may issue a *caus*, directed to the sheriff of the county in which such person resides, to arrest such person and bring him before the commission to testify.

If any person refuses to testify or to produce any relevant, unprivileged book, paper, record or document, the chairman shall apply to the Superior Court for the county in which such person resides for an order compelling compliance. Further refusal of such person shall be punished as for contempt. If such person is the claimant, the commission shall summarily dismiss his claim and order it forfeited to the State.

When subpoenaed by the commission, witnesses shall be offered the fees and mileage allowances authorized for attendance of witnesses in the District Court, provided no such fee or allowance shall be paid to any state officer or employee who appears on behalf of the State.

§ 1740-I. Waiver of hearings

On its own motion and at the request of the claimant and the Attorney General, the commission may waive the hearing of any claim for \$250 or less, and proceed upon affidavits filed by the claimant and the state agency concerned.

§ 1740-J. Records of claims

The commission shall cause a record to be made of each claim. Such record shall be retained in the files of the commission. Copies of such record and of the hearing transcript, if any, shall be made available upon request of the claimant and to the Attorney General and as the commission otherwise may direct.

§ 1740-K. Decision; finding of fact

Within 90 days after hearing a claim, the commission shall render its decision. It shall make a finding of fact on each claim and file such finding

with its order disposing of the claim. A copy of such finding and order shall be forwarded to the claimant and to the Attorney General.

§ 1740-L. Disqualification of commission member

No member of the commission shall participate in the hearing, consideration or decision of any claim in which he is interested or in respect of which he is biased or prejudiced. Upon the disqualification of a member, the chairman shall apply to the Governor for the appointment of a temporary member, who shall participate only in proceedings on the claim in respect of which the disqualification occurred.

§ 1740-M. Rehearings

Upon the discovery of new evidence, any claimant aggrieved by an order of the commission rejecting or recommending the rejection of his claim, in whole or in part, may apply for rehearing. The claimant shall file with the commission an application for such rehearing, in triplicate, stating concisely therein the matters which he desired to submit to the commission. A copy of such application shall be forwarded promptly by the commission to the Attorney General. Each such rehearing shall be subject to this chapter and the rules made thereunder respecting the hearing and disposition of claims.

§ 1740-N. Rules of procedure

The commission shall make and promulgate rules, not inconsistent with the policy and provisions of this chapter, governing its proceedings. Such rules shall avoid formal and technical requirements, but shall provide a simple, uniform, expeditious and economical procedure for the presentation and disposition of claims. Such rules shall be effective upon filing in the office of the Secretary of State.

§ 1740-O. Jurisdiction of commission; payment of claim

The commission may approve immediate payment of claims not exceeding \$3,000. The commission shall deliver to the State Controller a certified copy of the commission's order and the State Controller shall authorize payment from appropriations made to the state agency against which the claim was brought, or from the Contingent Account, when payment therefrom is authorized by the Governor and Council in accordance with section 1507. Within 5 days after the convening of each regular session, the commission shall report to the Legislature on all claims decided pursuant to this chapter.

§ 1740-P. Claims exceeding \$3,000; report to Legislature

The commission shall receive every claim for an amount in excess of \$3,000 in the manner provided in this chapter and shall make an investigation thereof in each instance, which at the discretion of the commission may include holding a hearing as provided in this chapter, and shall, within 5 days after the convening of each regular or special session of the Legislature, submit a report of every such investigation to the Legislature. Such report shall be accompanied by copies of all documents submitted to the commission in con-

nection with each such claim, and by a written transcript of the hearing, if any, held thereon.

As to each such claim, the Legislature, without the necessity of public hearing thereon, may authorize the payment of the claim in whole or in part, or reject it or may authorize the claimant to bring an action against the State on his claim.

In each instance of a claim for an amount in excess of \$3,000, the commission shall submit a copy of the investigation report thereon to the Attorney General and to the claimant, as provided in section 1740-K with reference to the finding and order of the commission.

§ 1740-Q. Fraud in presentation of claim

Any claimant who practices or attempts to practice fraud upon the State in the statement, proof or allowance of a claim shall forfeit such claim to the State. The tribunal before which such claim is pending shall specially find such fraud and it shall enter its judgment or order of forfeiture. Any person who knowingly presents or attempts to present and any person who knowingly participates in the preparation, presentation or allowance of a false or fraudulent claim shall be punished by a fine of not more than \$300 or by imprisonment for not more than 6 months, or by both.

Sec. 15. Appropriation. There is appropriated from the General Fund to the Department of Finance and Administration, Bureau of Insurance Management, the sum of \$64,360 for the fiscal year ending June 30, 1975 to carry out the purposes of this Act. Any unexpended balance in the appropriation made to the Maine Insurance Advisory Board for the fiscal year 1973-1974 shall be transferred to the new Bureau of Insurance Management.

The breakdown shall be as follows :

	1974-75
FINANCE AND ADMINISTRATION, DEPARTMENT OF	
Bureau of Insurance Management	
Personal Services	(5) \$54,600
All Other	4,950
Capital Expenditures	4,810
	<hr/> \$64,360

STATEMENT OF FACT

This Act implements Management and Cost Survey Recommendations 78, 79, 81 and 83, Maine Insurance Advisory Board.

The purpose of this Act is to eliminate the 5-man Insurance Advisory Board and establish a Bureau of Insurance Management within the Depart-

ment of Finance and Administration to oversee the administration of all insurance plans and programs. This bill also establishes a Claims Commission for claims against the State not exceeding \$3,000. The bureau shall also assume responsibility for the handling of subrogation claims relating to insured and self-insured programs.

This Act was supported by the Governor in his Special Message to the 106th Special Session of the Legislature on January 10, 1974.