

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 908

H. P. 689

House of Representatives, March 2, 1979

Speaker laid before the House and on Motion of Mr. Wyman of Pittsfield, referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Martin of Eagle Lake.

Cosponsors: Mr. Smith of Mars Hill, Mr. Wyman of Pittsfield and Mr. Gillis of Calais.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Creating a Workers' Compensation Insurance Fund.

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

Sec. 1. **39 MRSA § 22, first and 3rd sentences**, as amended by PL 1977, c. 696, § 397, are further amended to read:

Every insurance company issuing workers' compensation insurance policies covering the payment of compensation and benefits provided for in this Act **and the Workers' Compensation Insurance Fund** shall file with the Insurance Superintendent a copy of the form of such policies and no such policy shall be issued until he has approved said form.

He may require the filing of specific rates for workers' compensation insurance including classifications of risks, experience or any other rating information from insurance companies authorized to transact such insurance in Maine, **or the Workers' Compensation Insurance Fund** and may make or cause to be made such investigations as may be deemed necessary to satisfy himself that such rates are correct and proper before giving his approval and permitting such rates to be promulgated for the use of said companies **or the Workers' Compensation Insurance Fund**.

Sec. 2. 39 MRSA § 23, sub-§ 1-A, is enacted to read:

1-A. Insuring and keeping insured. By insuring and keeping insured the payment of such compensation and other benefits under an insurance policy with the Workers' Compensation Insurance Fund;

Sec. 3. 39 MRSA c. 6 is enacted to read:

CHAPTER 6

WORKERS' COMPENSATION INSURANCE FUND

§ 201. Fund

There is hereby created and established a fund to be known as the "Workers' Compensation Insurance Fund," hereinafter in this chapter called the "fund," to be administered by the Workers' Compensation Insurance Fund Board, hereinafter in this chapter called the "board," for the purpose of insuring employers against liability for injuries compensable under this chapter and for the purpose of insuring to employees and other persons the compensation and benefits provided by this chapter for employees and their dependents. Nothing in this chapter shall be construed to prohibit an employer from becoming or remaining a self-insurer pursuant to section 23, but it is the intention of the Legislature that, with the exception of self-insurers, the fund shall be the sole provider of insurance for liabilities for injuries compensable under this chapter.

§ 202. Contents

The Workers' Compensation Insurance Fund shall consist of:

1. Premiums. All premiums received and paid into the fund for insurance issued by it;
2. Property and securities. All property and securities acquired by and through the use of moneys belonging to the fund and acquired by gift or otherwise; and
3. Interest. All interest earned upon moneys belonging to the fund and deposited or invested as provided in this chapter.

§ 203. Rates

For the purpose only of establishing premium rates, the fund shall be deemed to be subject to the provisions of Title 24-A, chapter 25, as that chapter is from time to time amended.

§ 204. Liability

The fund may insure employers against their liability for compensation or damages under the Workers' Compensation Act of this State or any extension or amendment of those laws and against liability for compensation or damages under the United States Longshoremen's and Harbor Workers' Compensation Act or any extension of that Act.

§ 205. Self-supporting

The fund shall, after a reasonable time during which to establish itself, become neither more nor less than self-supporting. For that purpose, loss experience and expense shall be ascertained and dividends or credits may be made as provided in this chapter. The fund shall be exempt from any financial or budgetary control or supervision by any state agency, except for the audit made by the Superintendent of Insurance. The fund shall pay annually to the General Fund a sum equal to 2% of all gross direct premiums written by the fund during the preceding 12-month period.

§ 206. Dividends

The actual loss experience and expense of the fund shall be ascertained on or before the first day of July in each year for the calendar year preceding. If it is then shown that there exists an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared to, or credit allowed on, the renewal premium of each employer who has been insured with the fund. The cash dividend or credit is to be in an amount equivalent to the individual employer's proportion of divisible surplus.

§ 207. Application of assets

The assets of the fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of the salaries and all other administrative expenses charged against it.

§ 208. Real estate

The fund may acquire, own, sell and repurchase real property for its offices when so determined by the board.

§ 209. Custodian

The Treasurer of State shall be the custodian of all moneys and securities belonging to the fund, except as provided in this chapter. He shall be liable on his official bond for their safekeeping.

§ 210. Deposits

All moneys which belong to the fund and are collected or received under this chapter shall be delivered to the Treasurer of State or deposited to his credit in such bank or banks throughout the State as he designates but such moneys are not state moneys.

§ 211. Securities

All securities belonging to the fund shall be delivered to the Treasurer of State and held by him until otherwise disposed of as provided by this chapter.

§ 212. Expenditures

Upon delivery or deposit, moneys and securities shall be credited by the Treasurer of State to the fund. No moneys received or collected on account of the fund shall be expended or paid out without first passing into the State Treasury and being drawn therefrom as provided in this chapter.

§ 213. Ledger account

The Treasurer of State shall keep a special ledger account showing all of the assets pertaining to the fund. In the Treasurer of State's general ledger, this account may appear as a cash account, like other accounts of funds in the State Treasury, and only the actual cash coming into the fund shall be entered in the account.

§ 214. Revolving fund

The board may withdraw from the fund in the State Treasury, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate \$100,000 to be used as a revolving fund. The revolving fund shall be deposited in such banks and under such conditions as the board shall decide.

§ 215. Expenditures

Expenditures made from the revolving fund in payments made in connection with the insurance business transacted by the fund are exempted from the restrictions imposed upon the expenditures of state moneys. Reimbursement of the revolving fund shall be made upon presentation to the Treasurer of State of an abstract or statement of the expenditures. The abstract shall be in the form required by the Treasurer of State.

§ 216. Investments

The board shall cause all moneys in the fund which are in excess of current requirements to be invested and reinvested, from time to time, in securities authorized by law for the investment of funds of savings banks.

§ 217. Deposits

All moneys in the fund, in excess of current requirements and not otherwise invested, may be deposited by the Treasurer of State from time to time in banks authorized by law to receive deposits of public moneys, under the same rules and regulations that govern the deposit of public funds. The interest accruing thereon shall be credited to the fund.

§ 218. Valuation

During the months of January and July of each year, the board shall cause a valuation to be made of the properties and securities acquired and held for the fund and shall report the results of the valuation to the Governor and Superintendent of Insurance.

§ 219. Acts

All business and affairs of the fund, including any litigation, shall be conducted in the name of the fund, and in that name, without any other name or title, the board or the executive director of the fund may perform the acts authorized by this chapter.

§ 220. Reimbursement

The fund shall annually reimburse the State Treasury for services performed as custodian of the moneys of the fund.

§ 221. Board

The board shall be composed of 5 members appointed by the Governor, subject to review by the Joint Standing Committee on Labor and to confirmation by the Legislature. Two of the members shall be policyholders or representatives thereof and 2 shall be employees of a policyholder in the fund. With exception of appointments in the first instance, at least 4 of the members, in order to qualify for membership on the board, shall have been a policy holder, or the employee of a policyholder, in the fund for one year prior to his appointment and shall continue in that status during the period of his membership. The members shall be appointed for terms of 5 years each, except that of the members first appointed, one shall be appointed for a term of one year; one for a term of 2 years; one for a term of 3 years; one for a term of 4 years and one for a term of 5 years. They shall serve until their successors are appointed and have qualified. Vacancies shall be filled for the unexpired terms.

§ 222. Chairman

The Governor shall appoint annually in January from its members a chairman and vice-chairman, who shall act as chairman in the absence of the chairman.

§ 223. Powers

The board is vested with full power, authority and jurisdiction over the fund. The board may perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the fund, either in the administration thereof or in connection with the insurance policies to be carried on by it under this chapter, subject to such regulation as provided.

§ 224. Rules and regulations

The board shall have the authority to adopt, in a manner consistent with the Maine Administrative Procedure Act, rules and regulations relating to the conduct of the business of the fund.

§ 225. Meetings; quorum

The board shall meet at least once in each month and at such other times as it may determine or the business of the fund may require. Three or more members present and voting at a meeting in the conduct of the affairs of the board shall constitute a quorum. The action of 3 or more members present shall be the action of the board.

§ 226. Compensation

The members of the board shall be entitled to receive as compensation \$40 per diem for each day actually spent in attendance upon meetings of the board or on the business thereof, together with their actual and necessary traveling and other expenses incurred in connection therewith.

§ 227. Audit

The board shall have an annual audit of the books and records of the fund made by a duly qualified certified public accountant and shall cause an abstract summary of this audit to be published.

§ 228. Duties of board

The board may:

1. Sue and be sued. Sue and be sued in all actions arising out of any act or omission in connection with its business or affairs. Service of process in suits affecting the fund shall be made upon the executive director of the fund and he shall be responsible for initiating all litigation necessary in the affairs of the fund. The board shall provide for its own legal services, by contract or otherwise, in respect to the litigation;

2. Enter into contracts or obligations. Enter into any contracts or obligations relating to the fund which are authorized or permitted by law;

3. Invest and reinvest fund moneys. Invest and reinvest the moneys belonging to the fund as provided by this chapter; and

4. Implied powers. Conduct all business and affairs and perform all acts relating to the fund, whether or not specifically designated in this chapter.

§ 229. Reports to Superintendent of Insurance

The statistical and actuarial data compiled by the fund shall at all times be available to the Superintendent of Insurance for his use in judging the adequacy or inadequacy of rates and schedules filed. The executive director of the fund shall make to the Superintendent of Insurance reports required by law to be made to him.

§ 230. Executive director

The board shall appoint an executive director of the fund and fix his salary. The executive director shall manage and conduct the business and affairs of the fund under the general direction and subject to the approval of the board and shall perform such other duties as the board shall prescribe.

§ 231. Bond

The executive director, before entering on the duties of his office, shall qualify by giving an official bond approved by the board, in such sum as the board may order and by taking and subscribing to an official oath. The approval of the board

shall be by written endorsement on the bond. The bond shall be filed in the office of the Secretary of State.

§ 232. Duties

The board may delegate to the executive director of the fund, under such rules and regulations and subject to such conditions as it may from time to time prescribe, any power, function or duty conferred by law on the board in connection with the fund or in connection with the administration, management and conduct of business and affairs of the fund. The executive director may exercise such powers and functions and perform such duties with the same force and effect as the board, but subject to its approval.

§ 233. Employees

Subject to the approval of the board, the executive director shall appoint all employees.

§ 234. Additional duties

In conducting the business and affairs of the fund, the executive director may:

1. **Contracts for workers' compensation insurance.** Enter into contracts of workers' compensation insurance and other liability insurance authorized under this chapter, provided that no such policies of insurance may be issued until the fund has been certified by the Chairman of the Workers' Compensation Commission, the Superintendent of Insurance and the Commissioner of Manpower Affairs as being, in their view, of sufficient assets to conduct the affairs of the fund;

2. **Sale of annuities.** Sell annuities covering compensation benefits;

3. **Insurance of risks.** Decline to insure any risk in which the minimum requirement of safety fixed by statute or regulation of the State with regard to a safe place of employment are not complied with or which is beyond the safe carrying of the fund. Otherwise, he shall not refuse to insure any workers' compensation risk under state law, tendered with premium therefor;

4. **Reinsurance of risks.** Reinsure any risk or any part thereof;

5. **Insurance against loss.** Insure against any loss deemed advisable;

6. **Inspection and auditing of payrolls.** Cause to be inspected and audited, the payrolls of employers applying to the fund for insurance;

7. **Contract with health professionals and agencies.** Contract with physicians, surgeons, hospitals and rehabilitation facilities for medical, surgical and rehabilitation treatment and the care and nursing of injured persons entitled to benefits under this chapter; and

8. **Collection and disbursement of moneys.** Act for the fund in the collection and disbursements of all moneys necessary for administration of the fund and the conduct of the business of the fund.

Each quarter the executive director of the fund shall make a report to the Governor of the business done by the fund during the previous quarter and a statement of the fund's resources and liabilities at the close of that previous quarter.

§ 235. Declaration of public purpose

It is declared that the establishment of the fund is a public purpose and use for which public money may be spent and private property acquired and that the establishment is a function of state concern.

§ 236. Power to issue revenue bonds

The Workers' Compensation Insurance Fund Board is hereby authorized to issue revenue bonds and notes and refund bonds and notes for the purpose of organizing, establishing an initial fund and continuing operations and exercising all powers of the board. In no event shall any such bonds be issued or sold unless approved by the Governor.

§ 237. Credit of State not pledged

The bonds shall not create a pledge of the faith or credit of the State of Maine, but shall be totally dependent for repayment upon receipt of premium dollars from employers.

§ 238. Bondholder's rights against fund

The board shall cause to be written one or more bond resolutions for the issuance of the revenue bonds hereby authorized, which resolution shall clearly define those assets of the fund upon which bondholders shall have first claim. In any case in which payments to claimants under the fund shall conflict with repayment of bondholders, the statement of priority found in the resolution shall control. In any case, the board shall insure that the fund as supported by employer premiums and as reinsured is sufficient at all times to repay bondholders in accordance with the provisions of the bonds.

§ 239. Tax exemption

Bonds issued under this chapter, being for essential and governmental purposes, shall be exempt from taxation.

§ 240. No personal liability

No person connected with issuance of these bonds shall be personally liable on the bonds by reason of the issuance thereof.

§ 241. Negotiability of bonds

Whether or not the bonds are of such form and character as to be negotiable instruments under the Uniform Commercial Code, Article 8, the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, Article 8, subject only to the provisions of the bonds for registration.

§ 242. **Payment of claims**

In the case of employers securing insurance from this fund, the fund shall pay promptly all compensation awarded or approved pursuant to this chapter, provided that in the case of any settlement agreement or lump sum payment, the separate agreement of the employer and of the fund is first secured and the fund may in no manner condition its coverage on that agreement by the employer.

§ 243. **Investigation and defense of claims**

The fund may do any and all acts necessary to the investigation and defense of claims or may prompt the same to be done by or on behalf of the claimant's employer at the cost of the employer.

Sec. 4. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

1979-80

WORKERS' COMPENSATION INSURANCE
FUND BOARD

Personal Services	(3)	\$25,000
All Other		25,000
		<hr/> \$50,000

This appropriation shall be returned to the General Fund within a period of 5 years following certification by the Chairman of the Workers' Compensation Commission, the Superintendent of Insurance and the Commissioner of Manpower Affairs as being, in their view, sufficient assets to conduct the affairs of the fund.

STATEMENT OF FACT

The purpose of this legislation is to establish a state workers' compensation fund. When this fund is fully operative, it should, based on experience in other states with similar state funds, significantly reduce the cost to employers of purchasing workers' compensation insurance for their employees, while at the same time providing employees a less litigious process and greater assurance of quick payment of valid claims.

This legislation provides for the appointment of 5 commissioners, 2 representing employees, 2 representing employers and one representing the public, as strictly part-time commissioners, who in turn will hire an executive director. The executive director would prepare the fund to assume the responsibility of writing insurance within approximately one to 1 1/2 years. The appropriation section shows a loan from the General Fund of \$50,000 for initial start-up money, which will be repaid to the General Fund within 5 years of the time the fund starts selling compensation policies.