

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1028

H. P. 835

House of Representatives, February 25, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative LaPlante of Sabattus.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Establish a Program of Funded Self-insurance for Public Schools and Municipalities.

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

Sec. 1. 5 MRSA § 1725, 2nd ¶, first sentence, as enacted by PL 1971, c. 239, § 2, is repealed and the following enacted in its place:

The board shall be composed of 5 members, residents of the State, who shall be appointed by the Governor, as follows: One member, familiar with risk management, shall be selected from the public and 2 members shall be selected from representatives of the insurance industry; one member shall be a superintendent of a school administrative unit; and one member shall represent the Department of Educational and Cultural Services.

Sec. 2. 5 MRSA § 1726, 2nd ¶, as amended by PL 1971, c. 622, § 17, is further amended to read:

The members of the board, except the representatives of the Department of Educational and Cultural Services, shall receive as compensation for their services ~~30~~ \$40 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, subject to appropriations made.

Sec. 3. 5 MRSA § 1727, as enacted by PL 1971, c. 239, § 2, is repealed and the following enacted in its place:

§ 1727. Personnel; selection; duties

The board shall employ a director who has 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 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.

The board shall employ an assistant director for school and municipal insurance who has a comprehensive knowledge of school and municipal insurance practices and principles and who shall assist the director to administer the duties imposed by this chapter with respect to school and municipal insurance.

The board shall employ clerical assistants as necessary.

The board shall employ 2 assistants for terms up to 2 years who are qualified to determine the insurable value of school and municipal property and perform other duties essential to implement this chapter with respect to school and municipal insurance.

All employees must be employees of the State and are subject to the Personnel Law.

Sec. 4. 5 MRSA § 1727-A is enacted to read:

§ 1727-A. Administrative expenses

Salaries and capital costs of the assistant director for school and municipal insurance, the 2 assistants employed under section 1727, and any clerical assistants employed with respect to school and municipal insurance shall be paid from the school and municipal fund established by section 1731, subsection 2.

Sec. 5. 5 MRSA § 1728, as last amended by PL 1979, c. 14, is repealed and the following enacted in its place:

§ 1728. Powers and duties of the board

The board shall provide insurance advice and services for the State Government and any department or agency thereof, for all public schools, and for municipalities that elect to be insured under this chapter, for all forms of insurance, except for those departments or agencies or public schools or municipalities and those types of insurance otherwise provided for by law. In this regard the board has the following duties.

1. Annual reports. The board shall review annually the entire subject of insurance as it applies to all state property and activities, and to all public schools and municipalities insured under this chapter, and report to the Governor and the Commissioner of Finance and Administration, and to the Commissioner of Educational and Cultural Services in the case of school insurance; a statement of

its activities during the year ended the preceding June 30th. This report shall include:

- A. An evaluation of the state and school and municipality insurance programs;
- B. A complete statement of all types of costs of insurance in effect;
- C. Names of agents and companies of record;
- D. Valuation of school property, meaning buildings, vehicles and other property in the custody of superintendents under Title 20, section 473, and limits of liability coverage; and
- E. Such other matters as the board determines to be appropriate and necessary or as the Governor may request.

2. Underwriting information. The board shall require all public schools and municipalities insured under this chapter to furnish it, by February 1, 1982, with all information it reasonably requires to perform its duties under this chapter, including information about amounts, limits, premiums and deductibles, by lines of insurance. No municipality may be insured under this chapter unless it elects to do so in writing to the board by February 1, 1982.

3. Recommendations. The board shall recommend to the Governor such insurance protection as the board may deem to be necessary or desirable for the protection of the State, all public schools and municipalities insured under this chapter.

4. Purchase of insurance. Pursuant to programs approved by the Governor, the board shall provide necessary insurance and bonding protection and services of all types, including insurance service contracts, by funded self-insurance programs or by the purchase of insurance from companies or agents licensed to do business in the State, or by a combination of both, in order to give the State, all public schools and municipalities insured under this chapter, the best possible service, coverage and cost. The purchase of insurance under this section normally shall be made upon competitive bidding, except that the board may, in appropriate circumstances, purchase insurance by negotiation.

In the event of the purchase of insurance upon competitive bidding, the chairman of the board 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.

5. Schedules of state, school and municipal property. The board shall 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 that property and establish by appraisal the insurable value for that property.

For the purposes of this chapter, the State shall have an insurable interest in all public school and municipal property notwithstanding any other interest held by the State or any other governmental entities.

For the first year of the school and municipal fund, as established by section 1731, subsection 2, the value presently insured by a school administrative unit or a municipality shall serve as the insurable value until appraised by the board and approved by the school administrative unit or municipality.

6. Loss prevention practices. The board shall recommend sound safety engineering and loss prevention practices.

7. 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, public school or municipal claimant and the board, the loss shall be referred to appraisal as provided for in Title 24-A, section 3002.

8. Rejection of state risk. In the event that the board, by unanimous vote, determines that a risk may be prejudicial to the state's insurance program, it may refuse to include the risk in the 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, the department or agency in charge of the risk may request that the board 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 the property.

9. Rules and regulations. The board 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. 6. 5 MRSA § 1731, as enacted by PL 1971, c. 239, § 2, is repealed and the following enacted in its place:

§ 1731. Reserve funds for self-insured retention losses

1. State fund. A reserve fund, in this chapter called "the state 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 and approved by the Governor. The fund shall be a continuing fund and shall not lapse.

2. School and municipal fund. A reserve fund, in this chapter called "the school and municipal fund," is created to indemnify school administrative units and municipalities for self-insured retention losses and related loss adjustment expenses from those perils insured against under a deductible or funded self-insured program, as recommended by the board and approved by the Governor. The fund shall be a continuing fund and shall not lapse.

Sec. 7. 5 MRSA § 1731-A, as enacted by PL 1971, c. 239, § 2, is repealed and the following enacted in its place:

§ 1731-A. Limitation and provision for stop-loss insurance

The board may recommend to the Governor such reinsurance of the deductible

or self-insured amounts in this chapter as the board may deem necessary or desirable. Pursuant to programs approved by the Governor, the board may purchase the reinsurance protection from companies or agents licensed to do business in the State.

Deductible or self-insured retention provisions under the state fund may not exceed \$500,000 per occurrence with respect to any risk of loss.

Deductible or funded self-insured provisions under the school fund may not exceed \$1,000,000 per occurrence with respect to any risk of loss.

Sec. 8. 5 MRSA § 1731-B, is enacted to read:

§ 1731-B. Additional insurance purchased by school administrative units or municipalities

In the event that a school administrative unit or a municipality desires to purchase property insurance coverage in excess of the coverage provided, or to purchase insurance for their protection against other losses or claims expected and not provided, nothing in this chapter shall limit that right.

Sec. 9. 5 MRSA § 1732, as enacted by PL 1971, c. 239, § 2, is amended to read:

§ 1732. Administration

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

Sec. 10. 5 MRSA § 1733, as enacted by PL 1971, c. 239, § 2, is repealed and the following enacted in its place:

§ 1733. Capitalization of the funds

1. State fund. The state fund shall be capitalized by legislative appropriations, payments from state departments and agencies and by such other means as the Legislature may approve.

Appropriations and payments to the state fund in respect to General Fund departments and agencies may not exceed an amount equal to the difference between the premium for insurance proposed to be purchased and the premium for mandatory deductible or full insurance coverage plus a pro-rata share of the cost of the stop-loss insurance. In any instance in which the State has a 100% self-insured retention, the premium shall be that for full insurance coverage adjusted for any mandatory deductible.

All other state departments and agencies, except those specifically excluded by statute, shall pay to the state fund, premiums as determined by the board, not to exceed in each case an amount equal to the difference between the premium for insurance proposed to be purchased and the premium for mandatory deductible or

full insurance coverage plus a pro-rata share of the cost of the stop-loss insurance. In any instance in which the State has a 100% self-insured retention, the premium shall be that for all insurance coverage adjusted for any mandatory deductible.

All premiums referred to in this section shall be computed on the basis of rates promulgated by a recognized rating authority.

2. School and municipal fund. The school and municipal fund shall be capitalized by payments from the school administrative units and municipalities in an amount equal to 75% of the premium payments made by the unit in the preceding school year, or by the municipality in the preceding fiscal year, for the coverage to be provided by the school and municipal fund. The initial payment shall be made by September 1st, and adjusted payments shall be made by each September 1st thereafter. At the board's discretion, the funded self-insured amount shall be adjusted in accordance with the capitalization of the fund. Payment to the fund may be reduced, eliminated or increased subject to the ability of the fund to assume anticipated insured claims.

Sec. 11. 5 MRSA § 1733-A is enacted to read:

§ 1733-A. Working capital advance for school and municipal fund

The State Controller is authorized to advance the sum of \$50,000 from the General Fund to the school and municipal fund for the purpose of producing start-up and operating funds for the school and municipal fund on January 1, 1982. This advance shall be repaid from the school and municipal fund on October 1, 1982.

Sec. 12. 5 MRSA § 1734, as enacted by PL 1971, c. 239, § 2, is repealed and the following enacted in its place:

§ 1734. Fund limitation

1. State fund. The state fund may 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.

If the state fund reaches or exceeds the maximum amount specified in this subsection, payments to the fund, as specified in section 1733, subsection 1, shall cease and any excess shall be transferred into the General Fund not later than the end of the first quarter of the next fiscal year.

Payments to the state fund may not begin again until such time as the amount in the fund drops below the maximum amount specified in this subsection.

2. School and municipal fund. School and municipal fund may not exceed 2% of the then current value of all school and municipality insured or self-insured property protected by the fund as determined by the board.

If this fund reaches or exceeds the maximum amount specified in this subsection, payments to this fund, as specified in section 1733, subsection 2, shall cease.

Payments to this fund may not begin again until such time as the amount in the fund drops below the maximum amount specified in this subsection.

Sec. 13. 5 MRSA § 1735, as amended by PL 1971, c. 622, § 17-A, is repealed and the following enacted in its place:

§ 1735. Depletion of state and school and municipal funds

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

2. School and municipal fund. In the event that payments from the school and municipal fund should reduce it below \$1,000,000, the board shall require school administrative units and municipalities insured under this chapter to contribute the amount necessary to capitalize the deductible prorated on the insured value of the school administrative unit school and municipal property. The board may increase this minimum, with the approval of the Governor, if it reasonably believes the increase is necessary to maintain the deductible and to ensure sufficient moneys in the fund to insure the deductible.

Sec. 14. 5 MRSA § 1736, as enacted by PL 1971, c. 239, § 2, is repealed and the following enacted in its place:

§ 1736. Payment of losses

1. State fund. Pursuant to the recommendation of the board, the Commissioner of Finance and Administration shall cause payments from the fund or proceeds of insurance purchased in accordance with this chapter, or both, to be made available for repair or replacement of insured state property and payment of loss adjustment expenses.

No payment may be made from the state fund for any loss not exceeding \$250 and the fund shall pay only that portion of any loss in excess of \$250.

2. School and municipal fund. Pursuant to the recommendations of the board, the Commissioner of Finance and Administration shall cause payments from the school and municipal fund or proceeds of insurance purchased in accordance with this chapter, or both, to be made available for repair or replacement of insured school and municipal property and payment of loss adjustment expenses.

No payment may be made from the school and municipal fund for any loss not exceeding \$500 and the fund shall pay only that portion of any loss in excess of \$500.

Sec. 15. Effective date. This Act shall take effect on July 1, 1982, except that the Revised Statutes, Title 5, section 1733-A shall take effect on January 1, 1982, and the Revised Statutes, Title 5, section 1728, subsection 2 on February 1, 1982.

STATEMENT OF FACT

The purpose of this bill is to establish a program of funded self-insurance for public schools and municipalities.

Most school systems and municipalities currently purchase insurance through local agents from conventional commercial carriers. Purchasing insurance in this manner is generally uneconomical and often results in underinsured school and municipal property. By contract, a funded self-insurance program would also assure, adequate, uniform coverage for public schools and municipalities.

The bill contemplates a school and municipal insurance program in which all school systems would participate, but which would be optional for municipalities. The program would cover all the usual property and liability risks. Initially, each school system and participating municipality would be assessed an amount equal to 75% of its current total annual premium. Some of these start-up moneys would be set aside to capitalize a special "reserve" fund. The "reserve" fund would be used to self-insure a large deductible. The balance of these moneys would then be used to purchase "excess" coverage in the open market. Thereafter, every school system and participating municipality would be assessed periodically to maintain an adequate "reserve" fund and to buy "excessive" coverage.

Substantial savings would result under this program for several reasons: (1) There would be optimal dispersion of risk; (2) the large deductible made practicable under the program would greatly lessen the cost of "excess" coverage; (3) the enormous amount of "excess" business would stimulate highly competitive bidding among commercial carriers; (4) centralized risk management and loss control would qualify for premium discounts; and (5) investment earnings on the "reserve" fund would accrue to the fund itself rather than to stockholders.

The bill gives the responsibility for operating the school and municipal insurance program to the Maine Insurance Advisory Board, which manages a very similar and highly successful program of funded self-insurance for state property. The salaries and other expenses of the 4 persons required to administer the school and municipal insurance program would be paid from the "reserve" fund.