

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1504

H. P. 1291

House of Representatives, March 30, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Kelleher of Bangor.

STATE OF MAINE

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

AN ACT to Control the Cost of Workers' Compensation Rates to Maine Employers.

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

Sec. 1. 39 MRSA § 22, sub-§ 1, as enacted by PL 1979, c. 211, is amended to read:

1. Approval required. Every insurance company issuing workers' compensation insurance policies covering the payment of compensation and benefits provided for in this Act **and the Workers' Compensation Fund** shall file with the Superintendent of Insurance a copy of the form of the policies and no policy shall be issued until he has approved the form. It shall file its classification of risks and premium rates relating thereto, and any subsequent proposed classification thereof, none of which shall take effect until the Superintendent of Insurance has approved the same as adequate for the risks to which they respectively apply. 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 insurance in Maine **and the Workers' Compensation Fund** and may make or cause to be made such investigations as may be deemed necessary to satisfy himself that the rates are correct and proper before giving his approval and permitting the rates to be promulgated for the use of those companies **or the fund**. The Superintendent of Insurance may at any time withdraw his approval of any classification of risks or premium rates relating thereto and approve a revised classification thereof.

Sec. 2. 39 MRSA § 22, sub-§ 1-A is enacted to read:

1-A. Fund. 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. 7 is enacted to read:

CHAPTER 7

WORKERS' COMPENSATION INSURANCE FUND

§ 251. Fund

There is 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 Act for employees and their dependents. Nothing in this Act prohibits an employer from becoming or remaining a self-insurer pursuant to section 23.

§ 252. 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. 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 Act.

§ 253. 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.

§ 254. Liability

The fund may insure employers against their liability for compensation or damages under this chapter and against liability for compensation or damages under the United States Longshormen's and Harbor Workers' Compensatin Act or any extension of that Act.

§ 255. 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 is exempt from any financial or budgetary control or supervision by any state agency except for the audit made by the Insurance Superintendent.

§ 256. Dividends

The actual loss experience and expense of the fund shall be ascertained on or before July 1st 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.

§ 257. Application of assets

The assets of the fund are 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.

§ 258. Real estate

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

§ 259. 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 is liable on his official bond for their safekeeping.

§ 260. 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.

§ 261. 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.

§ 262. Expenditures

Upon such delivery or deposit, such 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 as provided in this chapter.

§ 263. 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.

§ 264. 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. Such revolving fund shall be deposited in such banks and under such conditions as the board shall decide.

§ 265. 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 such expenditures. Such abstract shall be in the form required by the Treasurer of State.

§ 266. 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.

§ 267. Deposits

All monyes 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.

§ 268. 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 Insurance Superintendent.

§ 269. 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.

§ 270. Reimbursements

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

§ 271. Board

The board shall be composed of 5 members appointed by the Governor. 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 policyholders or the employees of a policyholder in the fund for one year prior to appointment and must continue in such status during the period of 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; 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.

§ 272. 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.

§ 273. 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 or in connection with the insurance policies to be carried on by it under this chapter, subject to such regulation as provided.

§ 274. Rules and regulations

The board may adopt rules and regulations relating to the conduct of the business of the fund.

§ 275. 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 is the action of the board.

§ 276. Compensation

The members of the board are entitled to receive as compensation \$30 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.

§ 277. 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.

§ 278. Powers of board

The board may:

1. **Sue.** 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 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 such litigation;
2. **Contract.** Enter into any contracts or obligation relating to the fund which are authorized or permitted by law;
3. **Invest.** Invest and reinvest the moneys belonging to the fund as provided by this chapter; and
4. **Other business.** Conduct all business and affairs and perform all acts relating to the fund whether or not specifically designated in this chapter.

§ 279. Reports of Insurance Superintendent

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

§ 280. 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 duties as the board shall prescribe.

§ 281. 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.

§ 282. 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.

§ 283. Employees

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

§ 284. Additional powers

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

1. **Contract.** Enter into contracts of workers' compensation insurance and other liability insurance authorized under this Act, 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. **Annuities.** Sell annuities covering compensation benefits;

3. **Decline to insure.** 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 may not refuse to insure any workers compensation risk under state law, tendered with premium therefor;

4. **Reinsure.** Reinsure any risk or any part thereof;

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

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

7. **Treatment.** 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 Act; and

8. **Act for fund.** 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.

§ 285. 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.

§ 286. Power to issue revenue bonds

The Workers' Compensation Insurance Fund Board is authorized to issue

revenue bonds and notes and refunding 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 may any such bonds be issued or sold unless approved by a majority vote of the Legislative Council.

§ 287. Credit of state not pledged

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

§ 288. Bondholder's rights against fund

The board shall cause to be written one or more bond resolutions for the issuance of the revenue bonds authorized, which resolution shall clearly define those assets of the fund upon which bondholders have first claim. In any case in which payments to claimants have first claim. In any case in which payments to claimants under the fund conflict with repayment of bondholders, the statement of priority found in the resolution controls. 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.

§ 289. Tax exemption

Bonds issued under this chapter, being for essential and governmental purpose, are exempt from taxation.

§ 290. No personal liability

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

§ 291. 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 are made negotiable instruments within the meaning of and for all the purposes of Uniform Commercial Code, Article 8, subject only to the provisions of the bonds for registration.

§ 292. Payment of claims

In the case of employers securing insurance from the fund, the fund shall pay promptly all compensation awarded or approved pursuant to this Act; 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 such agreement by the employer.

STATEMENT OF FACT

The purpose of this bill is to provide for workers' compensation insurance through a state fund, thereby reducing the cost of Maine employers of providing

workers' compensation coverage by approximately 30%. The percentage of workers' compensation premiums paid by Maine employers and returned to Maine workers in the form of benefits has traditionally been in the range of 60%, whereas in the 12 American states which provide for workers' compensation coverage through a state fund, the percentage of premiums returned as benefits to injured workers' is approximately 90%. An additional advantage of this state fund to the Maine economy would be the retention of both control and investment decisions on this fund in Maine hands, rather than sources outside the State.

This bill provides a competitive state fund; that is, a state fund which would compete with private insurance, giving Maine employers a choice to place their workers' compensation coverage with either private insurance carriers or through a state fund. Presumably, Maine employers would place their coverage in the most cost-efficient fashion. An added advantage to Maine employers who choose to remain with private insurance coverage would be that the private insurance coverage would be competing with the state fund, and thus the desire of private insurance companies to increase their rates on workers' compensation would be diminished.