

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 495

6
7 H.P. 412 House of Representatives, February 1, 1983

8 Received by the Clerk of the House on February 1, 1983. Referred to the
9 Committee on Labor, and ordered printed pursuant to Joint Rule 14.

EDWIN H. PERT, Clerk

10 Presented by Speaker Martin of Eagle Lake.

Cosponsors: Representative Norton of Biddeford, Representative Tuttle of
Sanford and Senator Dutremble of York.

11
12 STATE OF MAINE
13

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

17 AN ACT to Reduce the Cost of Workers'
18 Compensation Rates to Maine Employers.
19

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

22 Sec. 1. 39 MRSA §2, sub-§1, as amended by PL
23 1979, c. 663, §§239 and 240, is further amended to
24 read:

25 1. Employer. The term "employer" includes:

26 A. Private employers;

27 B. The State;

28 C. Counties;

29 D. Cities;

- 1 E. Towns;
- 2 F. Water districts and all other quasi-public
3 corporations of a similar nature;
- 4 G. Municipal school committees; and
- 5 H. Union school committees.

6 if the employer is insured, the term "employer"
7 includes the insurer unless the contrary intent is
8 apparent from the context or is inconsistent with the
9 purposes of this Act.

10 Sec. 2. 39 MRSA §2, sub-§5, ¶B, as amended by PL
11 1979, c. 539, §1, is further amended to read:

12 B. The term "employee" shall be deemed to
13 include, if he elects to be personally covered by
14 this Title, any person who regularly operates a
15 business or practices a trade, profession or
16 occupation, whether individually, or in partner-
17 ship or association with other persons, whether
18 or not he hires employees. Such a person shall
19 elect personal coverage by insuring and keeping
20 insured the payment of compensation and other
21 benefits under a workers' compensation insurance
22 policy the fund. The insurance policy shall
23 clearly indicate the intention of the parties to
24 provide coverage for the person electing to be
25 personally covered. The insurance company shall
26 file with the commission notice, in such form as
27 the commission approves, of the issuance of any
28 workers' compensation policy to a person electing
29 personal coverage. That insurance shall not be
30 cancelled within the time limited in that policy
31 for its expiration until at least 30 days after
32 mailing a notice of the cancellation of that
33 insurance to the commissioner and the person
34 electing personal coverage. In the event that the
35 person electing personal coverage has obtained a
36 workers' compensation insurance policy from
37 another insurance company, and that insurance
38 becomes effective prior to the expiration of the
39 30 days, cancellation shall be effective as of
40 the effective date of the other insurance. The
41 Superintendent of Insurance is authorized to

1 review for his approval, at his discretion, an
2 appropriate classification for this class of per-
3 sons and a reasonable rate.

4 Sec. 3. 39 MRSA §2, sub-§7, as amended by PL
5 1977, c. 696, §395, is repealed.

6 Sec. 4. 39 MRSA §2, sub-§8, as amended by PL
7 1977, c. 696, §396, is repealed.

8 Sec. 5. 39 MRSA §21, as amended by PL 1981, c.
9 70, §3, is further amended to read:

10 §21. Liability of employer

11 1. Private employers. Every private employer
12 shall be subject to this Act and shall secure the
13 payment of compensation in conformity with ~~this~~
14 ~~section and sections 22 to 27~~ this subchapter and
15 chapter 7 with respect to all employees, subject to
16 the provisions stated in this section.

17 Any private employer who has not secured the payment
18 of compensation under ~~this section and sections 22 to~~
19 ~~27~~ this subchapter and chapter 7 shall not be enti-
20 tled, in a civil action brought by an employee or his
21 representative, for personal injuries or death aris-
22 ing out of and in the course of his employment, to
23 the defense set forth in section 3. Further, the
24 employee of any such employer may, in lieu of bring-
25 ing such a civil action, claim compensation from such
26 employer under this Act.

27 The following employers shall not be held liable
28 under this section for securing the payment of com-
29 pensation in conformity with ~~this section and sec-~~
30 ~~tions 22 to 27~~ this subchapter and chapter 7 with
31 respect to the employees listed, nor deprived of the
32 defenses listed in section 3:

33 A. Employers of employees engaged in domestic
34 service;

35 B. Employers of employees engaged in agriculture
36 as seasonal or casual farm laborers;

1 C. Employers of 4 or fewer farm or aquaculture
2 laborers, provided that the employer maintains
3 coverage by an employer's liability insurance
4 policy as provided in section 4; or

5 D. Employers of employees engaged in aquaculture
6 as seasonal or casual laborers, provided that the
7 employer maintains coverage by an employer's lia-
8 bility insurance policy as provided in section 4.

9 2. Governmental bodies. The State, every county,
10 and every city and town shall be subject to this Act
11 and shall secure the payment of compensation in con-
12 formity with ~~sections 21 to 27~~ this subchapter and
13 chapter 7.

14 Sec. 6. 39 MRSA §22, as amended by PL 1981, c.
15 471, §§1 and 2, is repealed.

16 Sec. 7. 39 MRSA §22-A, as amended by PL 1977, c.
17 696, §398, is repealed.

18 Sec. 8. 39 MRSA §23, sub-§1, as amended by PL
19 1977, c. 696, §399, is repealed and the following
20 enacted in its place:

21 1. Insuring under workers' compensation insur-
22 ance policy. By insuring and keeping insured the
23 payment of such compensation and other benefits under
24 an insurance policy with the Workers' Compensation
25 Insurance Fund, in accordance with chapter 7;

26 Sec. 9. 39 MRSA §24, as amended by PL 1977, c.
27 696, §403, is further amended to read:

28 §24. Voluntary election

29 Any private employer, any of whose employees are
30 exempt, may become subject to this Act with respect
31 to his employees and the act of the employer in
32 securing the payment of compensation to such employee
33 or class of employees in conformity with ~~sections 21~~
34 ~~to 27~~ this subchapter and chapter 7 shall constitute
35 as to such employer his election to become subject to
36 this Act without any further act on his part, but
37 only with respect to that employee or that class of

1 employees with respect to whom the employer has
2 secured compensation as provided in ~~sections 21 to 27~~
3 this subchapter and chapter 7, provided that, as to
4 any employer who secures compensation by making a
5 contract of workers' compensation insurance, such
6 election shall be deemed to have been made on the
7 effective date of the insurance policy.

8 Sec. 10. 39 MRSA §25, sub-§1, as enacted by PL
9 1981, c. 637, §7, is amended to read:

10 1. Benefit system. Subject to the approval of
11 the Superintendent of Insurance, any employer may
12 continue with his employees, in lieu of the compensa-
13 tion, benefits and insurance provided by this Act,
14 the system thereof which was used by such employer on
15 January 1, 1915. No such substitute system may be
16 approved unless it confers benefits upon injured
17 employees at least equivalent to the benefits pro-
18 vided by this Act, nor if it requires contributions
19 from the employees, unless it confers benefits in ad-
20 dition to those provided under this Act at least com-
21 mensurate with such contributions. Such substitute
22 system may be terminated by the superintendent with
23 the advice of the commission on reasonable notice and
24 hearing to the interested parties, if it appears that
25 the substitute system is not fairly administered, or
26 if its operation discloses latent defects threatening
27 its solvency, or if for any substantial reason it
28 fails to accomplish the purposes of this Act. Not-
29 withstanding Title 5, section 10051, the superinten-
30 dent is expressly granted the authority to revoke or
31 suspend the authority of an employer to continue with
32 a substitute system of benefits under this section
33 after a hearing held in accordance with Title 5,
34 chapter 375, subchapter IV, and Title 24-A, chapter
35 3. An employer who is authorized to substitute a
36 plan under ~~sections 21 to 27~~ this subchapter and
37 chapter 7 shall give his employees notice thereof in
38 a form to be prescribed by the commission, and a
39 statement of the plan approved shall be filed with
40 the superintendent.

41 Sec. 11. 39 MRSA §27, as amended by PL 1977, c.
42 696, §404, is further amended to read:

1 §27. Preservation of existing employer status

2 An employer with a currently approved workers'
3 compensation policy, or a currently accepted self-
4 insurer, within ~~sections 21 to 27~~ this subchapter and
5 chapter 7 shall be considered in compliance with this
6 Act until the expiration or cancellation date of the
7 current assent based thereon.

8 Sec. 12. 39 MRSA §28, first ¶, as amended by PL
9 1973, c. 746, §9, is further amended to read:

10 An employee of an employer, who shall have
11 secured the payment of compensation as provided in
12 ~~sections 21 to 27~~ this subchapter and chapter 7 shall
13 be held to have waived his right of action at common
14 law to recover damages for the injuries sustained by
15 him, and under the statutes specified in section 4.

16 Sec. 13. 39 MRSA c. 7 is enacted to read:

17 CHAPTER 7

18 WORKERS' COMPENSATION

19 INSURANCE FUND

20 §251. Fund

21 There is established a fund to be known as the
22 "Workers' Compensation Insurance Fund," to be admin-
23 istered by the Workers' Compensation Insurance Fund
24 Board, in this chapter called the "board," for the
25 purpose of insuring all employers against liability
26 for injuries sustained by their employees compensable
27 under this Act and for the purpose of insuring to
28 employees and other persons the compensation and ben-
29 efits provided by the Act for employees and their
30 dependents. It is the intention of the Legislature
31 that, with the exception of allowable self-insurance,
32 the fund shall be the sole provider of insurance for
33 liability for injuries compensable under this Act.

34 §252. No proprietary interest by State

1 The State declares that it has no proprietary
2 interest in the Workers' Compensation Insurance Fund
3 or in the contributions made to the fund.

4 §253. Rates

5 The Workers' Compensation Insurance Fund is sub-
6 ject to the rate-making laws and regulations of the
7 Superintendent of Insurance as provided by law, and
8 the payment of taxes and the making of reports to
9 other state agencies as provided by law.

10 §254. Liability

11 The Workers' Compensation Insurance Fund may
12 insure employers against their liability for compen-
13 sation or damages under the United States
14 Longshoremen's and Harbor Workers' Compensation Act
15 or any extension of that Act.

16 §255. Contents

17 The Workers' Compensation Insurance Fund, in this
18 chapter called the "fund," shall consist of:

19 1. Premiums. All premiums received and paid
20 into the fund for insurance issued by it;

21 2. Property. All property and securities ac-
22 quired by and through the use of money belonging to
23 the fund and acquired by gift or otherwise; and

24 3. Interest. All interest earned upon money
25 belonging to the fund and deposited or invested as
26 provided in this chapter.

27 §256. Self-supporting

28 The fund shall, after a reasonable time during
29 which to establish itself, become neither more nor
30 less than self-supporting. For that purpose, loss
31 experience and expense shall be ascertained and divi-
32 dends or credits may be made as provided in this
33 chapter. The fund shall be exempt from any financial
34 or budgetary control or supervision by any state
35 agency, except for the audit made by the Superintend-
36 ent of Insurance.

1 §257. Dividends

2 The actual loss experience and expense of the
3 fund shall be ascertained on or before July 1st each
4 year for the calendar year preceding. If it is shown
5 that there exists an excess of assets over liabilities,
6 necessary reserves and a reasonable surplus for
7 the catastrophe hazard, a cash dividend may be
8 declared to, or credit allowed on, the renewal pre-
9 mium of each employer who has been insured with the
10 fund. The cash dividend or credit is to be in an
11 amount which the board in its discretion considers to
12 be the individual employer's proportion of divisible
13 surplus.

14 §258. Payment of losses

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

19 §259. Real estate

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

23 §260. Custodian

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

28 §261. Deposits

29 All moneys which belong to the fund and are col-
30 lected or received under this chapter shall be deliv-
31 ered to the Treasurer of State or deposited to his
32 credit in such bank or banks throughout the State as
33 he designates, but these moneys are not state moneys.

34 §262. Securities

35 All securities belonging to the fund shall be
36 delivered to the Treasurer of State and held by him

1 until otherwise disposed of as provided by this chap-
2 ter.

3 §263. Expenditures

4 Upon delivery or deposit, the moneys and securi-
5 ties shall be credited by the Treasurer of State to
6 the fund. No moneys received or collected on account
7 of the fund may be expended or paid out without first
8 passing into the State Treasury and being drawn
9 therefrom as provided in this chapter.

10 §264. Ledger account

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

18 §265. Revolving fund

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

25 §266. Expenditures

26 Expenditures made from the revolving fund in pay-
27 ments made in connection with the insurance business
28 transacted by the fund are exempt from the restric-
29 tions imposed upon the expenditures of state moneys.
30 Reimbursement of the revolving fund shall be made
31 upon presentation to the Treasurer of State of an ab-
32 stract or statement of these expenditures. The ab-
33 stract shall be in the form required by the Treasur-
34 er of State.

35 §267. Investments

36 The board shall cause all moneys in the fund,
37 which are in excess of current requirements, to be

1 invested and reinvested, from time to time, in
2 securities authorized by law for the investment of
3 funds of savings banks.

4 §268. Deposits

5 All moneys in the fund, in excess of current re-
6 quirements and not otherwise invested, may be depos-
7 ited by the Treasurer of State from time to time in
8 banks authorized by law to receive deposits of public
9 moneys, under the same rules that govern the deposit
10 of public funds. The interest accruing thereon shall
11 be credited to the fund.

12 §269. Valuation

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

19 §270. Acts

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

25 §271. Reimbursement

26 The fund shall annually reimburse the Treasurer
27 of State for services performed as custodian of the
28 moneys of the fund.

29 §272. Powers of board

30 The board may:

31 1. Sue. Sue and be sued in all actions arising
32 out of any act or omission in connection with its
33 business or affairs. Service of process in suits
34 affecting the fund shall be made upon the executive
35 director of the fund and he shall be responsible for
36 initiating all litigation necessary in the affairs of

1 the fund. The board shall provide for its own legal
2 services, by contract or otherwise, in respect to
3 that litigation;

4 2. Contract. Enter into any contracts or obli-
5 gations relating to the fund which are authorized or
6 permitted by law;

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

10 4. Business. Conduct all business and affairs
11 and perform all acts relating to the fund whether or
12 not specifically designated in this chapter.

13 §273. Reports to Superintendent of Insurance

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

21 §274. Workers' Compensation Insurance Fund Board

22 The Workers' Compensation Insurance Fund Board
23 shall be composed of 5 members appointed by the Gov-
24 ernor. Two of the members shall be policyholders or
25 representatives thereof and 2 shall be employees of a
26 policyholder in the fund. With exception of appoint-
27 ments in the first instance, at least 4 of the mem-
28 bers, in order to qualify for membership on the
29 board, shall have been a policyholder or the employee
30 of a policyholder in the fund for one year prior to
31 his appointment and shall continue in that status
32 during the period of his membership. The members
33 shall be appointed for terms of 5 years each, except
34 that, of the members first appointed, one shall be
35 appointed for a term of one year; one for a term of 2
36 years; one for a term of 3 years; one for a term of 4
37 years; and one for a term of 5 years. They shall
38 serve until their successors are appointed and have
39 qualified. Vacancies shall be filled for the unex-
40 pired terms.

1 §275. Chairman

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

5 §276. Powers

6 The board is vested with full power, authority
7 and jurisdiction over the fund. The board may per-
8 form all acts necessary or convenient in the exercise
9 of any power, authority or jurisdiction over the
10 fund, either in the administration hereof or in con-
11 nection with the insurance policies to be carried on
12 by it under this chapter, subject to such regulation
13 as provided.

14 §277. Rules

15 The board may adopt rules relating to the conduct
16 of the business of the fund.

17 §278. Meetings; quorum

18 The board shall meet at least once in each month
19 and at such other times as it may determine or the
20 business of the fund may require. Three or more mem-
21 bers present and voting at a meeting in the conduct
22 of the affairs of the board shall constitute a quo-
23 rum. The action of 3 or more members present shall
24 be the action of the board.

25 §279. Compensation

26 The members of the board are entitled to receive
27 as compensation \$30 a day for each day actually spent
28 in attendance upon meetings of the board or on the
29 business thereof, together with their actual and
30 necessary traveling and other expenses incurred in
31 connection therewith.

32 §280. Audit

33 The board shall have an annual audit of the books
34 and records of the fund made by a duly qualified cer-
35 tified public accountant and shall cause an abstract
36 summary of this audit to be published.

1 §281. Executive director

2 The board shall appoint an executive director of
3 the fund and fix his salary. The executive director
4 shall manage and conduct the business and affairs of
5 the fund under the general direction and subject to
6 the approval of the board and shall perform such
7 other duties as the board prescribes.

8 §282. Bond

9 The executive director before entering on the
10 duties of his office shall qualify by giving an offi-
11 cial bond approved by the board, in such sum as the
12 board may order and by taking and subscribing to an
13 official oath. The approval of the board shall be by
14 written endorsement on the bond. The bond shall be
15 filed in the office of the Secretary of State.

16 §283. Duties

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

27 §284. Employees

28 Subject to the approval of the board, the execu-
29 tive director shall appoint all employees.

30 §285. Powers of executive director

31 1. Powers. In conducting the business and
32 affairs of the fund, the executive director may:

33 A. Enter into contracts of workers' compensation
34 insurance and other liability authorized under
35 this Act;

36 B. Sell annuities covering compensation bene-
37 fits;

1 C. Decline to insure any risk in which the mini-
2 imum requirement of safety fixed by statute or
3 regulation of the State with regard to a safe
4 place of employment are not complied with, or
5 which is beyond the safe carrying of the fund.
6 Otherwise, he shall not refuse to insure any
7 workers' compensation risk under state law, ten-
8 dered with premium therefor;

9 D. Reinsure any risk or any part thereof;

10 E. Cause to be inspected and audited the pay-
11 rolls of employers applying to the fund for
12 insurance;

13 F. Make rules for the settlement of claims
14 against the fund;

15 G. Contract with physicians, surgeons, hospitals
16 and rehabilitation facilities for medical, sur-
17 gical and rehabilitation treatment and the care
18 and nursing of injured persons entitled to bene-
19 fits under this Act;

20 H. Make safety inspections of risks and furnish
21 advisory services; and

22 I. Act for the fund in the collection and dis-
23 bursements of all moneys necessary for adminis-
24 tration of the fund and the conduct of the busi-
25 ness of the fund.

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

31 §286. Declaration of necessity and public purposes

32 It is declared that there exists a need to estab-
33 lish this Workers' Compensation Insurance Fund
34 immediately, inasmuch as a substantial percentage of
35 Maine's workers are currently unable to secure the
36 benefits of similar insurance by any other means. It
37 is further declared that the establishment of the
38 fund is a public purpose and use for which public

1 money may be spent and private property acquired, and
2 that the establishment is a function of state con-
3 cern.

4 §287. Power to issue revenue bonds

5 The Workers' Compensation Insurance Fund Board
6 shall issue revenue bonds and notes and refunding
7 bonds and notes for the purpose of organizing, estab-
8 lishing an initial fund and continuing operations and
9 exercising all powers of the board.

10 §288. Credit of State not pledged

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

15 §289. Bondholder's rights against fund

16 The board shall cause to be written one or more
17 bond resolutions for the issuance of the revenue
18 bonds authorized by this chapter. The resolution
19 shall clearly define those assets of the fund upon
20 which bondholders shall have first claim. In any
21 case in which payments to claimants under the fund
22 shall conflict with repayment of bondholders, the
23 statement or priority found in the resolution shall
24 control. In any case, the board shall insure that
25 the fund as supported by employer premiums is suffi-
26 cient at all times after a reasonably necessary
27 start-up period, to repay bondholders their full
28 investment with established interest.

29 §290. Tax exemption

30 Bonds issued under this chapter, being for essen-
31 tial and governmental purpose, are exempt from taxa-
32 tion.

33 §291. No personal liability

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

1 §292. Negotiability of bonds

2 Whether or not the bonds are of such form and
3 character as to be negotiable instruments under the
4 Uniform Commercial Code, Title 11, Article 8, the
5 bonds are hereby made negotiable instruments within
6 the meaning of and for all the purposes of the Uni-
7 form Commercial Code, Title 11, Article 8, subject
8 only to the provisions of the bonds for registration.

9 STATEMENT OF FACT

10 The purpose of this bill is to provide for work-
11 ers' compensation insurance through an exclusive
12 state fund, thereby reducing the cost to Maine
13 employers of providing workers' compensation coverage
14 by approximately 30%. The percentage of workers'
15 compensation premiums paid by Maine employers and
16 returned to Maine workers in the form of benefits has
17 traditionally been in the range of 60%, whereas, in
18 the 12 American states which provide for workers'
19 compensation coverage through a state fund, the per-
20 centage of premiums returned as benefits to injured
21 workers is approximately 90%. An additional advan-
22 tage of the state fund to the Maine economy would be
23 the retention of both control and investment deci-
24 sions on this fund in Maine hands, rather than
25 sources outside the State.

26 1779011883