

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 752

6
7 H.P. 604

House of Representatives, February 15, 1983

8 Referred to the Committee on Business Legislation. Sent up for concur-
9 rence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.
11 Cosponsor: Representative Kelleher of Bangor.

12 STATE OF MAINE
13

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

17 AN ACT to Establish a Competitive State
18 Workers' Compensation Insurance Fund.
19

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

22 Sec. 1. 2 MRSA §6, sub-§1, as repealed and
23 replaced by PL 1981, c. 705, Pt. L, §§1 - 3, is
24 amended to read:

25 1. Range 91. The salaries of the following
26 state officials and employees shall be within salary
27 range 91:

28 Commissioner of Transportation;

29 Commissioner of Conservation;

30 Director of State Development Office;

1 Commissioner of Finance and Administration;
2 Commissioner of Educational and Cultural Ser-
3 vices;
4 Commissioner of Environmental Protection;
5 Commissioner of Human Services;
6 Commissioner of Mental Health and Mental Retarda-
7 tion;
8 Commissioner of Public Safety;
9 Commissioner of Business Regulation;
10 Commissioner of Labor;
11 Commissioner of Personnel;
12 Commissioner of Agriculture, Food and Rural
13 Resources;
14 Commissioner of Inland Fisheries and Wildlife;
15 tfhl Commissioner of Marine Resources; and
16 Commissioner of Corrections; and
17 Executive Director of the Workers' Compensation
18 Insurance Fund.

19 Sec. 2. 39 MRSA §22, sub-§1, as enacted by PL
20 1979, c. 211, is amended to read:

21 1. Approval required. Every insurance company
22 issuing workers' compensation insurance policies cov-
23 ering the payment of compensation and benefits pro-
24 vided for in this Act and the Workers' Compensation
25 Insurance Fund shall file with the Superintendent of
26 Insurance a copy of the form of the policies and no
27 policy shall be issued until he has approved the
28 form. It shall file its classification of risks and
29 premium rates relating thereto, and any subsequent
30 proposed classification thereof, none of which shall
31 take effect until the Superintendent of Insurance has
32 approved the same as adequate for the risks to which

1 they respectively apply. He may require the filing of
2 specific rates for workers' compensation insurance
3 including classifications of risks, experience or any
4 other rating information from insurance companies
5 authorized to transact insurance in Maine and the
6 Workers' Compensation Insurance Fund and may make or
7 cause to be made such investigations as may be deemed
8 necessary to satisfy himself that the rates are cor-
9 rect and proper before giving his approval and per-
10 mitting the rates to be promulgated for the use of
11 those companies or the fund. The Superintendent of
12 Insurance may at any time withdraw his approval of
13 any classification of risks or premium rates relating
14 thereto and approve a revised classification thereof.

15 Sec. 3. 39 MRSA §23, sub-§1-A is enacted to
16 read:

17 1-A. Fund. By insuring and keeping insured the
18 payment of the compensation and other benefits under
19 an insurance policy with the Workers' Compensation
20 Insurance Fund;

21 Sec. 4. 39 MRSA c. 7 is enacted to read:

22 CHAPTER 7

23 WORKERS' COMPENSATION INSURANCE FUND

24 §251. Fund

25 There is created and established a fund to be
26 known as the "Workers' Compensation Insurance Fund,"
27 in this chapter called the "fund," to be administered
28 by the Workers' Compensation Insurance Fund Board, in
29 this chapter called the "board," for the purpose of
30 insuring employers against liability for injuries
31 compensable under this Act and for the purpose of
32 insuring to employees and other persons the compensa-
33 tion and benefits provided by this Act for employees
34 and their dependents. The fund shall be governed by
35 the provisions of the Maine Insurance Code, Title
36 24-A, except where the provisions are in conflict
37 with the express provisions of this chapter and the
38 reasonable implications thereof, in which case the
39 provisions of this chapter shall govern.

1 §252. Contents

2 The Workers' Compensation Insurance Fund shall
3 consist of:

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

6 2. Property. All property and securities acquired
7 by and through the use of moneys belonging to the
8 fund and acquired by gift or otherwise; and

9 3. Interest. All interest earned upon moneys
10 belonging to the fund and deposited or invested as
11 provided in this chapter.

12 §253. Rates

13 The fund shall be subject to the provisions of
14 Title 24-A, chapter 25, except that the fund may not
15 become a member of, or subscriber to, a rating orga-
16 nization.

17 §254. Liability

18 The fund may insure employers against their lia-
19 bility for compensation under this Act and against
20 liability for compensation under the United States
21 Longshoremen's and Harbor Workers' Compensation Act
22 or any extension of that Act.

23 §255. Self-supporting

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

33 The State, its instrumentalities and political
34 subdivisions, shall, if they elect to be policyhold-
35 ers, be subject to the same obligations as other
36 policyholders.

1 §256. Application of assets

2 The assets of the fund are applicable to the pay-
3 ment of losses sustained on account of insurance and
4 to the payment of the salaries and all other adminis-
5 trative expenses charged against it.

6 §257. Real Estate

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

10 §258. Custodian

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

15 §259. Delivery or deposit of moneys belonging to the
16 fund

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

22 §260. Securities

23 All securities belonging to the fund shall be
24 delivered to the Treasurer of State and held by him
25 until otherwise disposed of as provided by this chap-
26 ter.

27 §261. Expenditures

28 Upon delivery or deposit, these moneys and
29 securities shall be credited by the Treasurer of
30 State to the fund. No moneys received or collected on
31 account of the fund may be expended or paid out with-
32 out first passing into the State Treasury and being
33 drawn as provided in this chapter.

34 §262. Ledger account

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

8 §263. Revolving fund

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

15 §264. Expenditures

16 Expenditures made from the revolving fund in pay-
17 ments made in connection with the insurance business
18 transacted by the fund are exempt from the restric-
19 tions imposed upon the expenditures of state moneys.
20 Reimbursement of the revolving fund shall be made
21 upon presentation to the Treasurer of State of an ab-
22 stract or statement of these expenditures. This ab-
23 stract shall be in the form required by the Treasurer
24 of State.

25 §265. Investments

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

31 §266. Deposits

32 All moneys in the fund, in excess of current re-
33 quirements and not otherwise invested, may be depos-
34 ited by the Treasurer of State from time to time in
35 banks authorized by law to receive deposits of public
36 moneys, under the same rules that govern the deposit
37 of public funds. The interest accruing thereon shall
38 be credited to the fund.

1 §267. Valuation

2 Annually, the board shall cause a valuation to be
3 made of the properties and securities acquired and
4 held for the fund and shall report the results of the
5 valuation to the Governor and Superintendent of
6 Insurance.

7 §268. Acts

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

13 §269. Reimbursements

14 The fund shall annually reimburse the Treasurer
15 of State for services performed as custodian of the
16 moneys of the fund. Reimbursement received by the
17 Treasurer of State under this section shall be dedi-
18 cated to carrying out the Treasurer of State's duties
19 under section 258.

20 §270. Workers' Compensation Insurance Fund Board

21 The Workers' Compensation Insurance Fund Board
22 shall be composed of 5 members who shall be different
23 policyholders or representatives of the board. Ini-
24 tial appointments shall be made by the Governor as
25 follows: One shall be appointed for a term of one
26 year, one for a term of 2 years, one for a term of 3
27 years, one for a term of 4 years and one for a term
28 of 5 years. Thereafter, members shall be appointed by
29 the Governor for terms of 5 years each. They shall
30 serve until their successors are appointed and have
31 qualified. Vacancies shall be filled for the unex-
32 pired term. With the exception of appointments in the
33 first instance, members shall have been policyholders
34 in the fund for one year prior to appointment and
35 shall continue in that status during the period of
36 membership.

37 §271. Chairman

1 The board shall elect annually in January from
2 its members a chairman and vice-chairman, who shall
3 act as chairman in the absence of the chairman.

4 §272. Powers and duties of the board

5 1. General. The board is vested with full power,
6 authority and jurisdiction over the fund. The board
7 may perform all acts necessary or convenient in the
8 exercise of any power, authority or jurisdiction over
9 the fund, either in the administration or in connec-
10 tion with the insurance policies to be carried on by
11 it under this chapter, subject to such regulations as
12 provided.

13 2. Rules. The board may adopt rules relating to
14 the conduct of the business of the fund.

15 3. Suits. The board may sue and be sued in all
16 actions arising out of any act or omission in connec-
17 tion with its business or affairs. Service of process
18 in suits affecting the fund shall be made upon the
19 executive director of the fund and he shall be
20 responsible for initiating all litigation necessary
21 in the affairs of the fund. The board shall provide
22 for its own legal services by contract or otherwise,
23 in respect to this litigation. The board may obtain
24 insurance to cover any liability for these acts or
25 omissions.

26 4. Contracts. The board may enter into any con-
27 tracts or obligations relating to the fund which are
28 authorized or permitted by law.

29 5. Investments. The board may invest and reinvest
30 the moneys belonging to the fund as provided by this
31 chapter.

32 6. Reinsurance. The board may reinsure any risk
33 or any part thereof and shall reinsure against spe-
34 cific and excess losses.

35 7. Dividends. The board may declare a dividend
36 when there is an excess of assets over liabilities,
37 necessary reserves and a reasonable surplus for a
38 catastrophe hazard.

1 8. Delegation. The board may delegate to the
2 executive director of the fund, under such rules and
3 subject to such conditions as it may from time to
4 time prescribe, any power, function or duty conferred
5 by law on the board in connection with the fund or in
6 connection with the administration, management and
7 conduct of business and affairs of the fund. The
8 executive director may exercise such powers and func-
9 tions and perform such duties with the same force and
10 effect as the board, but subject to its approval.

11 9. Other business. The board may conduct all
12 business and affairs and perform all acts relating to
13 the fund whether or not specifically designated in
14 this chapter.

15 §273. Meetings; quorum

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

23 §274. Compensation

24 The members of the board are entitled to receive
25 as compensation \$50 for each day actually spent in
26 attendance upon meetings of the board or on the busi-
27 ness thereof, together with their actual and neces-
28 sary traveling and other expenses incurred in connec-
29 tion therewith.

30 §275. Audit

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

35 §276. Reports of the Superintendent of Insurance

36 The statistical and actuarial data compiled by
37 the fund shall at all times be available to the
38 Superintendent of Insurance for his use in judging

1 the adequacy or inadequacy of rates and schedules
2 filed. The executive director of the fund shall make
3 to the Superintendent of Insurance reports required
4 by law to be made to him, including an annual report
5 comparable to that required of casualty insurers.

6 §277. Executive director

7 The board shall appoint an Executive Director of
8 the Workers' Compensation Insurance Fund who shall be
9 in charge of the day-to-day operation of the fund.
10 The executive director shall have proven successful
11 experience as an executive at the general management
12 level and must have been employed in the workers'
13 compensation division of a casualty insurer for at
14 least 5 years. The executive director shall serve at
15 the pleasure of the board.

16 §278. Bond

17 The executive director, before entering in the
18 duties of his office, shall qualify by giving an
19 official bond approved by the board, in such sum as
20 the board may order and by taking and subscribing to
21 an official oath. The approval of the board shall be
22 by written endorsement on the bond. The bond shall be
23 filed in the office of the Secretary of State.

24 §279. Powers and duties of the executive director

25 In conducting the business and affairs of the
26 fund, the executive director shall perform all duties
27 required by the board. In addition, subject to rules
28 adopted by the board, the executive director may:

29 1. Act for fund. Act for the fund in the collec-
30 tion and disbursements of all moneys necessary for
31 administration of the fund and the conduct of the
32 business of the fund;

33 2. Annuities. Sell annuities covering compensa-
34 tion benefits;

35 3. Contract. Enter into contracts of workers'
36 compensation insurance and other liability insurance
37 authorized under this Act, provided that no such
38 policies of insurance may be issued until the fund

1 has been certified by the Chairman of the Workers'
2 Compensation Commission, the Superintendent of Insur-
3 ance and the Commissioner of Labor as being, in their
4 view, of sufficient assets to conduct the affairs of
5 the fund;

6 4. Decline to insure. Decline to insure any risk
7 in which the minimum requirement of safety fixed by
8 statute or regulation of the State with regard to a
9 safe place of employment are not complied with, or
10 which is beyond the safe carrying of the fund. Other-
11 wise, he may not refuse to insure any worker's com-
12 ensation risk under state law, tendered with premium
13 therefor;

14 5. Inspect. Cause to be inspected and audited the
15 payrolls of employers applying to the fund for insur-
16 ance;

17 6. Insure. Insure against any loss deemed advisa-
18 ble;

19 7. Reinsure. Reinsure any risk or any part
20 thereof; and

21 8. Treatment. Contract with physicians, surgeons,
22 hospitals and rehabilitation facilities for medical,
23 surgical and rehabilitation treatment and the care
24 and nursing of injured persons entitled to benefits
25 under this Act.

26 §280. Employees

27 Subject to the approval of the board, the execu-
28 tive director shall appoint all employees, who shall
29 be subject to the Personal Law.

30 §281. Reports

31 Each quarter the executive director of the fund
32 shall make a report to the Governor of the business
33 done by the fund during the previous quarter and a
34 statement of the fund's resources and liabilities at
35 the close of that previous quarter. Copies of this
36 report shall be forwarded at the same time to the
37 Superintendent of Insurance, the President of the
38 Senate and the Speaker of the House of Representa-
39 tives.

1 §282. Declaration of public purpose

2 It is declared that the Workers' Compensation
3 Insurance Fund Board is established as a body corpo-
4 rate and politic and a public instrumentality of the
5 State. It is further declared that the establishment
6 of the fund is a public purpose and use for which
7 public money may be spent and private property ac-
8 quired and that its establishment is a function of
9 state concern, provided that the debts and liabili-
10 ties of the fund shall not constitute debts and lia-
11 bilities of the State.

12 §283. General Fund moneys

13 All money appropriated to the fund from the Gen-
14 eral Fund shall be repaid within 5 years of the
15 appropriation, with interest at a rate equal to the
16 then prevailing rate being earned on ordinary General
17 Fund investments, except that no money may be repaid
18 before December 1, 1985.

19 Sec. 5. Effective date. This Act shall take
20 effect January 1, 1985.

21 STATEMENT OF FACT

22 This bill establishes a competitive state Work-
23 ers' Compensation Insurance Fund, that is, a state
24 fund which would compete with private insurance.
25 Currently, 12 other states have similar funds, while
26 6 states, Puerto Rico, the Virgin Island and federal
27 employees are covered by exclusive funds.

28 Typically, state funds pay out a significantly
29 higher percentage of premiums toward losses than do
30 insurance companies. This may result in lower rates
31 both for policyholders of the fund and those of com-
32 peting insurers.

33 1997020183