

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 249

6
7 H.P. 215

House of Representatives, January 29, 1985

8 Reference to the Committee on Business and Commerce suggested and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

11
12 STATE OF MAINE
13

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

17 AN ACT Relating to the Maine Self-Insurance
18 Guarantee Association.
19

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

22 Sec. 1. 39 MRSA §23, sub-§2, as amended by PL
23 1983, c. 668, §1, is repealed and the following en-
24 acted in its place:

25 2. Proof of solvency and ability to pay; bond.
26 By furnishing satisfactory proof to the Superintend-
27 ent of Insurance of his solvency and financial abili-
28 ty to pay the compensation and benefits, and deposit
29 cash, satisfactory securities or a security bond,
30 with the Workers' Compensation Commission, in such
31 sum as the superintendent may determine; that bond to
32 run to the Treasurer of State and his successor in
33 office and to be conditional upon the faithful per-
34 formance of this Act relating to the payment of com-
35 penensation and benefits to any injured employee. In
36 case of cash being deposited, it shall be placed at

1 interest by the Treasurer of State and the accumula-
2 tion of interest on the cash or securities so depos-
3 ited shall be paid to the employer depositing the
4 cash. Any such cash security deposit, security bond,
5 or the proceeds from that bond shall be held by the
6 Treasurer of State in trust for the benefit of the
7 self insurer and Maine Self-Insurance Guarantee Asso-
8 ciation and be paid to the Maine Self-Insurance Guar-
9 antee Association by the Treasurer of State in the
10 event the Maine Self-Insurance Guarantee Association
11 is adjudged liable for or pays any covered claim of
12 the employer, as defined in section 23-A, subsection
13 4, paragraph A, including loss adjustment expenses
14 and attorneys' fees.

15 The superintendent may at any time in his discre-
16 tion deny to an employer the right to continue in the
17 exercise of the option granted by this section.

18 Notwithstanding any provision of this section or
19 chapter, any bond or security deposit required of a
20 public employer, which is a self-insurer, shall not
21 exceed \$50,000, provided that the public employer has
22 a net worth equal to or in excess of \$25,000,000 and
23 a state-assessed valuation equal to or in excess of
24 \$300,000,000. Public employer means the State, the
25 University of Maine, counties, cities and towns.

26 Sec. 2. 39 MRSA §23, sub-§4, ¶M is enacted to
27 read:

28 M. All group self-insurers shall obtain excess
29 insurance as follows:

30 (1) Specific excess insurance with a limit
31 of at least \$2,000,000;

32 (2) Aggregate excess insurance with a limit
33 commensurate with the self-insurers size,
34 loss experience and financial condition.
35 The requirement for either or both types of
36 excess insurance may be waived by the super-
37 intendent in his sole discretion. A surety
38 bond may, with the approval of the superin-
39 tendent and in the amount as he may deter-
40 mine, be substituted for either or both
41 types of excess insurance. The size of

1 retentions and loss funds shall be prudent
2 with respect to the risks involved. All ex-
3 cess insurance contracts shall name the
4 group self-insurer and the Maine Self-
5 Insurance Guarantee Association as
6 coinsureds. All excess contracts written
7 after the effective date of this subsection
8 shall provide that the proceeds shall be
9 payable directly to the Maine Self-Insurance
10 Guarantee Association to the extent the
11 Maine Self-Insurance Guarantee Association
12 shall be adjudged liable for or pay any cov-
13 ered claim of the group self-insurer, as de-
14 fined in section 23-A, subsection 4, para-
15 graph A, including loss adjustment expenses
16 and attorneys' fees.

17 Sec. 3. 39 MRSA §23, sub-§6, ¶B, as enacted by
18 PL 1981, c. 484, §7, is repealed and the following
19 enacted in its place:

20 B. All individual self-insurers shall maintain
21 excess insurance as follows:

22 (1) Specific excess insurance with a limit
23 of at least \$2,000,000;

24 (2) Aggregate excess insurance with a limit
25 and loss fund commensurate with the
26 self-insurers size, loss experience and fi-
27 nancial condition. Higher specific excess
28 limits may be required for those businesses
29 with a high risk of multiple injury from a
30 single occurrence. The retention underlying
31 specific excess policies shall be the lowest
32 retention generally available for businesses
33 of similar size and exposure, but may, at
34 the superintendent's discretion, be estab-
35 lished at higher levels consistent with the
36 employer's claims experience and financial
37 condition.

38 The requirement for either specific or aggregate
39 excess insurance or both may be waived by the su-
40 perintendent and, with the approval of the super-
41 intendent, a surety bond may be substituted in an
42 amount as he may determine. The Maine self-

1 Insurance Guarantee Association shall be named as
2 an additional obligee on any such surety bond and
3 all such bonds shall provide that the Maine Self-
4 Insurance Guarantee Association shall receive all
5 proceeds of any such bond directly for the obli-
6 gor in the event the Maine Self-Insurance Guarante-
7 tee Association may be adjudged liable for or it
8 shall have paid any covered claim of the employ-
9 er, as defined in section 23-A, subsection 4,
10 paragraph A, including loss adjustment expenses
11 and attorneys' fees.

12 All excess insurance contracts shall name the em-
13 ployer and the Maine Self-Insurance Guarantee As-
14 sociation as coinsureds. All excess insurance
15 contracts written after the effective date of
16 this subsection shall provide that all proceeds
17 shall be paid to the Maine Self-Insurance Guarante-
18 tee Association in the event the association
19 shall be adjudged liable for or it shall have
20 paid any covered claims of the employer, as de-
21 defined in section 23-A, subsection 4, paragraph A,
22 including loss adjustment expense and attorneys'
23 fees.

24 **Sec. 4. 39 MRSA §23, sub-§7, as enacted by PL**
25 **1983, c. 484, §7, is amended to read:**

26 **7. Acceptable deposit funds or surety bonds.** In
27 addition to cash, the deposit funds acceptable to the
28 superintendent as a security deposit shall include
29 United States Government bonds, notes or bills, is-
30 sued or guaranteed by the United States of America;
31 bonds secured by the full faith, credit and taxing
32 power of political subdivisions of the United States
33 rated in the 3 highest grades by a national rating
34 agency such as Moody's, Standard and Poor's, Fitch,
35 as of the foregoing year end; money market funds
36 which are invested only in United States Government
37 or government agency obligations with a maturity of
38 one year or less; high grade commercial paper rated
39 as either A1 or P1 by a national rating agency; cer-
40 tificates of deposit issued by a duly chartered com-
41 mercial bank or thrift institution in the State which
42 are protected by the Federal Deposit Insurance corpo-
43 ration; savings certificates issued by any savings
44 and loan association in the State which are protected

1 by the Federal Savings and Loan Insurance Corpora-
2 tion, and surety bonds in a form prescribed by the
3 superintendent which are issued by any corporate
4 surety which meets the qualifications prescribed by
5 regulation of the superintendent, and such other in-
6 vestments approved by the superintendent. The Maine
7 Self-Insurance Guarantee Association shall be named
8 as an obligee on any self-insurance surety bond and
9 all such bonds shall provide that the Maine Self-
10 Insurance Guarantee Association shall receive all
11 proceeds of any such bond directly from the obligor
12 to the extent of any covered claims of the employer
13 as defined in section 23-A, subsection 4, paragraph
14 A, for which the Maine Self-Insurance Guarantee Asso-
15 ciation is adjudged liable or which it shall have
16 paid, including loss adjustment expenses and attor-
17 neys' fees.

18 Sec. 5. 39 MRSA §23-A, sub-§1, as amended by PL
19 1983, c. 649, §1, is repealed and the following en-
20 acted in its place:

21 1. Created. There is created the Maine Self-
22 Insurance Guarantee Association the purpose of which
23 is to provide for the payment of covered claims as
24 defined in this Act, to avoid excessive delay in pay-
25 ment, to avoid financial loss to claimants because of
26 insolvency of a self-insurer and to assist, when
27 called upon to do so by the superintendent, in the
28 detection of self-insurer insolvencies.

29 Sec. 6. 39 MRSA §23-A, sub-§7, ¶A, as enacted by
30 PL 1981, c. 484, §8, is amended to read:

31 A. The superintendent shall:

32 (1) Notify the association of the existence
33 of an insolvent member self-insurer not la-
34 ter than 30 days after he receives notice of
35 an insolvency pursuant to the standards set
36 forth in subsection 6-; and

37 (2) Notwithstanding any other provision of
38 law requiring confidentiality, transmit the
39 information as may be in the possession of
40 the Bureau of Insurance to the Maine Self-
41 Insurance Guarantee Association as it shall

1 reasonably and lawfully request in order to
2 facilitate the securing of reinsurance and
3 to promote the underlying purposes of the
4 Act.

5 Sec. 7. 39 MRSA §23-A, sub-§10, as enacted by PL
6 1981, c. 484, §8, is amended to read:

7 10. Immunity. There shall be no liability on the
8 part of and no cause of action of any nature shall
9 may arise against any member self-insurer, the asso-
10 ciation or its agents or employees, the board of di-
11 rectors or its individual members, or the superin-
12 tendent or his representatives for any ~~action~~ acts or
13 omissions taken by them in the performance of their
14 powers and duties under this subchapter.

15 Sec. 8. 39 MRSA §23-A, sub-§12, as enacted by PL
16 1981, c. 484, §8, is repealed and the following en-
17 acted in its place:

18 12. Stay of proceedings. All proceedings under
19 this Act to which the insolvent self-insurer is a
20 party either before the commission or a court in this
21 State, and the running of all time periods against
22 either the insolvent self-insurer or the Maine Self-
23 Insurance Guarantee Association under this Act, shall
24 be stayed for 60 days from the date of notice to the
25 Maine Self-Insurance Guarantee Association of the in-
26 solvency in order to permit the association to inves-
27 tigate, prosecute or defend properly any petition,
28 claim or appeal under this Act.

29 STATEMENT OF FACT

30 The purposes of this bill are as follows.

31 Section 1 adds to the Maine Revised Statutes, Ti-
32 tle 39, section 23, subsection 2, the requirement
33 that any cash security deposit held by the State for
34 any self-insurer shall be turned over to the Maine
35 Self-Insurance Guarantee Association if an insolvency
36 of the self-insurer occurs.

37 Sections 2 and 3 places in the law the present
38 requirements for excess insurance on group

1 self-insurers found in regulations which language is
2 similar to the present statutory language requiring
3 excess insurance for individual self-insurers. Both
4 sections 2 and 3 contain new language authorizing the
5 superintendent to waive either or both types of ex-
6 cess insurance in his discretion or to allow surety
7 bond substitutes. There is also new language in both
8 sections which require that excess insurance con-
9 tracts provide for payment of proceeds to the Maine
10 Self-Insurance Guarantee Association in the event of
11 insolvency.

12 Section 4 provides that the Maine Self-Insurance
13 Guarantee Association is to be named as obligee on
14 all surety bonds and in the event of a self-insurer
15 insolvency the bonds shall provide for payment di-
16 rectly to the Maine Self-Insurance Guarantee Associa-
17 tion.

18 Section 5 removes from the existing law any im-
19 plication that the Maine Self-Insurance Guarantee As-
20 sociation has a role in the prevention of self-
21 insurer insolvencies and reduces its role in detec-
22 tion of those insolvencies to those instances where
23 the superintendent requests assistance. The intent
24 is to relieve the Maine Self-Insurance Guarantee As-
25 sociation of any present duty that it may have to un-
26 dertake prevention or detection activities on its own
27 initiative.

28 Section 6 is intended to make it clear that the
29 superintendent may share with the Maine Self-
30 Insurance Guarantee Association such information as
31 is in the possession of the Bureau of Insurance in
32 order to facilitate the obtaining of reinsurance and
33 to promote the underlying purposes of the Act.

34 Section 7 adds "omissions" to the immunity law.

35 Section 8 expands the 60-day stay provision in
36 all proceedings to cover the running of all time pe-
37 riods prior to the commencement of proceedings. This
38 expansion of the stay provision was necessitated by
39 the enactment of the so-called "early pay" system.

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