

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1122
6

7 H.P. 792

House of Representatives, March 26, 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 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22 Sec. 1. 2 MRSA §6, sub-§2, as repealed and re-
23 placed by PL 1981, c. 705, Pt. L, §§1 to 3, is
24 amended to read:

25 2. Range 90. The salaries of the following
26 state officials and employees shall be within salary
27 range 90:

28 Superintendent of Banking;

29 Bureau of Consumer Credit Protection Superintend-
30 ent;

31 State Tax Assessor; and

32 Superintendent of Insurance; and

1 Executive Director of Workers' Compensation In-
2 insurance Fund.

3 Sec. 2. 5 MRSA §12004, sub-§7, ¶A, sub-¶9 is en-
4 acted to read:

5 (9) Workers' Compensation \$50/day 39 MRSA §251
6 Insurance Fund

7 Sec. 3. 39 MRSA §22-C, sub-§§1, 2, 3, 6, 8, 10
8 and 12, as reallocated by PL 1983, c. 816, Pt. B,
9 §23, are amended to read:

10 1. Policies. Every The Workers' Compensation
11 Insurance Fund and every insurance company issuing
12 workers' compensation insurance policies covering the
13 payment of compensation and benefits provided for in
14 this Act shall file with the Superintendent of Insur-
15 ance:

16 A. A copy of the form of the policies. A policy
17 may not be issued until the superintendent has
18 approved the form; and

19 B. Its classification of risks and their premium
20 rates and any subsequent proposed classifications
21 and premium rates, which may not take effect un-
22 til the superintendent has approved them.

23 Premium rates less than those approved may be used
24 and filed with the superintendent. If the superin-
25 tendent has reason to believe that the filing
26 produces rates which are inadequate or unfairly dis-
27 criminatory, he may disapprove them under Title 24-A,
28 chapters 23 and 25.

29 2. Approval of rates. The superintendent shall
30 apply the procedures and standards of this section in
31 investigating, reviewing and approving or disapprov-
32 ing rates.

33 A. He may require the filing of specific rates
34 for workers' compensation insurance, including
35 classifications of risks, experience or any other
36 rating information from the fund and insurance
37 companies authorized to transact insurance in
38 this State.

1 B. He may make or cause to be made investiga-
2 tions as he may deem necessary to satisfy himself
3 that the rates to be promulgated are just and
4 reasonable.

5 C. He may at any time, after public hearing,
6 withdraw his approval of a previously approved
7 rate filing.

8 3. Contents of filing. A rate filing shall in-
9 clude, for the fund where applicable, and for each
10 company included in the filing:

11 A. For each of the 3 calendar years immediately
12 preceding the date of the filing:

13 (1) The actual gross earned premiums allo-
14 cable to the coverage of risks in this
15 State;

16 (2) For unearned premium, earned premium,
17 loss and loss expense reserve funds, and
18 capital and surplus subject to investment,
19 allocable to the coverage of risks in this
20 State:

21 (a) The amount of investments of each
22 type of funds;

23 (b) The types of investments of all of
24 these funds; and

25 (c) The annual income amounts, before
26 taxes, generated by the aggregate of
27 these investments;

28 (3) The gross rate of return on admitted
29 assets;

30 (4) The amount of dividends or the equiva-
31 lent allowed or returned to policyholders,
32 members or subscribers;

33 (5) The aggregate annual expenses allocable
34 to the coverage of risks in this State, in-
35 cluding acquisition and field supervision
36 expenses, taxes, licenses and fees, other

1 than federal income tax, and general ex-
2 penses, each stated separately. Safety en-
3 gineering expense and loss control services'
4 expense shall be stated separately under
5 general expense;

6 (6) The aggregate annual losses and loss
7 adjustment expense allocable to the coverage
8 of risks in this State;

9 (7) The total loss reserves for this cover-
10 age being held at the beginning and end of
11 each calendar year and the annual paid
12 losses, including methods and interest rates
13 used in determining present value for the
14 reserves to which they apply; and

15 (8) The changes and improvements instituted
16 in loss control and employee safety engi-
17 neering;

18 B. For each risk classification:

19 (1) The rate presently applicable to the
20 classification;

21 (2) The rate proposed for the classifica-
22 tion;

23 (3) Loss experience in this State for each
24 of the 3 most recent years available, in-
25 cluding, in each classification, payroll,
26 number of serious workers' compensation
27 cases, number of nonserious cases, the
28 losses, including medical expenses incurred
29 with respect to each type of case, loss ad-
30 justment expense and the total of all losses
31 and expenses incurred; and

32 (4) The information required by this para-
33 graph shall be presented in tabular form;

34 C. If data reported is determined by percentage
35 factors, rather than actual expense, there shall
36 be stated an explanation of the basis of the fac-
37 tors used;

1 D. Statements or exhibits that reasonably sub-
2 stantiate assumptions, methodology or calcula-
3 tions used in support of the proposed rates or to
4 generate the information or data in the filing;
5 and identification of any of those that are known
6 or believed to be contrary to established policy
7 of the superintendent; and

8 E. Any other information required to be included
9 by the superintendent.

10 6. Standard for approval. The provisions of
11 this subsection apply to approval or disapproval of
12 rate filings.

13 A. To approve a rate filing, the superintendent
14 shall find that, from the filing and sworn testi-
15 mony, the fund, the rating organization or insur-
16 er has established, in addition to all other re-
17 quirements, that:

18 (1) The proposed rates are just and reason-
19 able and not excessive, inadequate or un-
20 fairly discriminatory;

21 (2) The profit factor used in establishing
22 the rate requested will produce only a just
23 and reasonable return on investment alloca-
24 ble to the coverage of risks in this State;
25 and

26 (3) The reported loss reserves, including
27 the discount rates applied to those re-
28 serves, are reasonable.

29 B. In determining if the proposed rates are just
30 and reasonable, the superintendent shall consid-
31 er:

32 (1) The profit factor used in establishing
33 the rate requested and its relationship to
34 the return on the investment allocable to
35 the coverage of risks in this State;

36 (2) The reported investment income earned
37 or realized from funds generated from busi-
38 ness in this State;

1 (3) The reported loss reserves, including
2 the methods and the interest rates used in
3 determining the present value for reported
4 reserves;

5 (4) Reported annual losses and loss adjust-
6 ment expenses;

7 (5) The measures taken to contain costs,
8 including loss control, loss adjustment and
9 employee safety engineering programs;

10 (6) The relationship of the aggregate
11 amount of operating expenses reported by all
12 companies to the annual operating expenses
13 reported in the filing and the annual insur-
14 ance expense exhibits filed by the fund and
15 by each company with the bureau; and

16 (7) The operating and management efficiency
17 of the fund and the companies.

18 C. The justness and reasonableness of rates
19 shall be determined for the period in which the
20 rates shall be in effect.

21 D. The fund, the rating organization or insurer
22 shall have the burden of proving that the pro-
23 posed rates meet the requirements of this section
24 and Title 24-A, chapters 23 and 25.

25 E. A rate filing may not be approved unless the
26 superintendent finds that the information sup-
27 plied in the filing and sworn testimony is accu-
28 rate and sufficient to meet the requirements of
29 this section.

30 8. Information for parties and intervenors. A
31 party or intervenor may make written application to
32 the superintendent for an order that the fund, a rat-
33 ing organization or insurer, which has presented a
34 filing, produce any information relevant to whether
35 the filing rates meet the requirements of this sec-
36 tion and Title 24-A, except for information relating
37 to a particular claim. If the fund, rating organiza-
38 tion or insurer fails to furnish the information
39 within the time prescribed by the superintendent, the

1 party or intervenor making the request may make writ-
2 ten application to the superintendent for an order
3 disapproving the filing. If, after a hearing, the
4 superintendent determines that the failure to furnish
5 the information was without good cause, he shall is-
6 sue an order for disapproval of the filing.

7 10. Subsequent filing. A The fund, a rating or-
8 ganization or insurer may not file a rate filing
9 within 180 days of receiving approval of a prior rate
10 filing.

11 12. Costs. For the purpose of determining
12 whether the filing meets the requirements of this
13 section, the superintendent may employ staff person-
14 nel and outside consultants. The reasonable costs re-
15 lated to the review of workers' compensation rate
16 filings, including conduct of the hearing, shall be
17 borne by the fund, the rating organizations or insur-
18 ers making the filing.

19 Sec. 4. 39 MRSA §23, sub-§1-A is enacted to
20 read:

21 1-A. Fund. By insuring and keeping insured the
22 payment of that compensation and other benefits under
23 an insurance policy with the Workers' Compensation
24 Insurance Fund.

25 Sec. 5. 39 MRSA c. 7 is enacted to read:

26 CHAPTER 7

27 WORKERS' COMPENSATION INSURANCE FUND

28 §251. Fund

29 There is created a fund to be known as the "Work-
30 ers' Compensation Insurance Fund," in this chapter
31 called the "fund," to be administered by the Workers'
32 Compensation Insurance Fund Board, in this chapter
33 called the "board," for the purpose of insuring em-
34 ployers against liability for injuries compensable
35 under this chapter and for the purpose of insuring to
36 employees and other persons the compensation and ben-
37 efits provided by this chapter for employees and
38 their dependents. The fund shall be governed by the

1 provisions of the Maine Insurance Code, Title 24-A,
2 except where those provisions are in conflict with
3 the express provisions of this chapter and the rea-
4 sonable implications of this chapter, in which case,
5 the provisions of this chapter shall govern.

6 §252. Contents

7 The Workers' Compensation Insurance Fund shall
8 consist of:

9 1. Premiums. All premiums received and paid in-
10 to the fund for insurance issued by it;

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

14 3. Interest. All interest earned upon money be-
15 longing to the fund and deposited or invested as pro-
16 vided in this chapter.

17 §253. Rates

18 The fund shall be subject to the provisions of
19 Title 24-A, chapter 25, except that the fund may not
20 become a member of, or subscriber to, a rating orga-
21 nization.

22 §254. Liability

23 The fund may insure employers against their lia-
24 bility for compensation or damages under this chapter
25 and against liability for compensation or damages un-
26 der the United States Longshoremen's and Harbor Work-
27 ers' Compensation Act or any extension of that Act.

28 §255. Self-supporting

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

1 The State, its instrumentalities and political
2 subdivisions shall, if they elect to be policyhold-
3 ers, be subject to the same obligations as other pol-
4 icyholders.

5 §256. Application of assets

6 The assets of the fund are applicable to the pay-
7 ment of losses sustained on account of insurance and
8 to the payment of the salaries and all other adminis-
9 trative expenses charged against it.

10 §257. Real estate

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

14 §258. Custodian

15 The Treasurer of State shall be the custodian of
16 all money and securities belonging to the fund except
17 as provided in this chapter. He is liable on his of-
18 ficial bond for their safekeeping.

19 §259. Deposits

20 All money which belongs to the fund and is col-
21 lected or received under this chapter shall be deliv-
22 ered to the Treasurer of State or deposited to his
23 credit in such bank or banks throughout the State as
24 he designated, but that money is not state money.

25 §260. Securities

26 All securities belonging to the fund shall be de-
27 livered to the Treasurer of State and held by him un-
28 til otherwise disposed of as provided by this chap-
29 ter.

30 §261. Expenditures

31 Upon delivery or deposit, the money and securi-
32 ties shall be credited by the Treasurer of State to
33 the fund. No money received or collected on account
34 of the fund may be expended or paid out without first
35 passing into the State Treasury and being drawn as
36 provided in this chapter.

1 §262. Ledger account

2 The Treasurer of State shall keep a special ledg-
3 er account showing all of the assets pertaining to
4 the fund. In the Treasurer of State's general ledg-
5 er, this account may appear as a cash account, like
6 other accounts of funds in the State Treasury and on-
7 ly the actual cash coming into the fund shall be en-
8 tered in the account.

9 §263. Revolving fund

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

16 §264. Expenditures

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

26 §265. Investments

27 The board shall cause all money in the fund which
28 is in excess of current requirements to be invested
29 and reinvested, from time to time, in securities au-
30 thorized by law for the investment of funds of sav-
31 ings banks.

32 §266. Deposits

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

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 ti-
11 tle. The board or the executive director of the fund
12 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 money 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. Board

21 The board shall be composed of 5 members who
22 shall be different policyholders or representatives
23 of different policyholders. Initial appointments
24 shall be made by the Governor as follows: One shall
25 be appointed for a term of one year; one for a term
26 of 2 years; one for a term of 3 years; one for a term
27 of 4 years; and one for a term of 5 years. Thereaf-
28 ter, members shall be appointed by the Governor for
29 terms of 5 years each. They shall serve until their
30 successors are appointed and have qualified. Vacan-
31 cies shall be filled for the unexpired term. With
32 the exception of appointments in the first instance,
33 members shall have been policyholders in the fund for
34 one year prior to appointment and must continue in
35 that status during the period of membership.

36 §271. Chairman

37 The board shall elect annually in January from
38 its members a chairman and vice-chairman, who shall
39 act as chairman in the absence of the chairman.

1 §272. Powers and duties of the board

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

10 2. Rules. The board may adopt, in accordance
11 with the Maine Administrative Procedure Act, Title 5,
12 chapter 375, rules relating to the conduct of the
13 business of the fund.

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

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

28 5. Investments. The board may invest and rein-
29 vest the money belonging to the fund as provided by
30 this chapter.

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

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

38 8. Delegation. The board may delegate to the
39 executive director of the fund, under the rules and

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

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

13 §273. Meetings; quorum

14 The board shall meet at least once in each month
15 and at other times as it may determine or the busi-
16 ness of the fund may require. Three or more members
17 present and voting at a meeting in the conduct of the
18 affairs of the board shall constitute a quorum. The
19 action of 3 or more members present is the action of
20 the board.

21 §274. Compensation

22 The members of the board are entitled to receive
23 as compensation \$50 for each day actually spent in
24 attendance upon meeting of the board or on the busi-
25 ness of the board, together with their actual and
26 necessary traveling and other expenses incurred in
27 connection therewith.

28 §275. Audit

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

33 §276. Reports of Superintendent of Insurance

34 The statistical and actuarial data compiled by
35 the fund shall at all times be available to the Su-
36 perintendent of Insurance for his use in judging the
37 adequacy or inadequacy of rates and schedules filed.
38 The executive director of the fund shall make to the

1 Superintendent of Insurance reports required by law
2 to be made to him, including an annual report compa-
3 rable to that required of casualty insurers.

4 §277. Executive director

5 The board shall appoint an executive director who
6 shall be in charge of the day-to-day operation of the
7 fund. The executive director shall have proven suc-
8 cessful experience as an executive at the general
9 management level and must have been employed in the
10 workers' compensation division of a casualty insurer
11 for at least 5 years. The executive director shall
12 serve at the pleasure of the board.

13 §278. Bond

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

21 §279. Powers and duties of the executive director

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

26 1. Act for fund. Act for the fund in the col-
27 lection and disbursements of all money necessary for
28 administration of the fund and the conduct of the
29 business of the fund;

30 2. Annuities. Sell annuities covering compensa-
31 tion benefits;

32 3. Contract. Enter into contracts of workers'
33 compensation insurance and other liability insurance
34 authorized under this chapter, provided that no such
35 policies of insurance may be issued until the fund
36 has been certified by the chairman of the Workers'
37 Compensation Commission, the Superintendent of Insur-
38 ance and the Commissioner of Labor as being, in their

1 view, of sufficient assets to conduct the affairs of
2 the fund;

3 4. Decline to insure. Decline to insure any
4 risk in which the minimum requirements of safety
5 fixed by statute or regulation of the State with re-
6 gard to a safe place of employment are not complied
7 with, or which is beyond the safe carrying of the
8 fund. Otherwise, he may not refuse to insure any
9 worker's compensation risk under state law, tendered
10 with premium therefor;

11 5. Inspect. Cause to be inspected and audited
12 the payrolls of employers applying to the fund for
13 insurance;

14 6. Insure. Insure against any loss deemed ad-
15 visable;

16 7. Reinsure. Reinsure any risk or any part of a
17 risk; and

18 8. Treatment. Contract with physicians, sur-
19 geons, hospitals and rehabilitation facilities for
20 medical, surgical and rehabilitation treatment and
21 the care and nursing of injured persons entitled to
22 benefits under this chapter.

23 §280. Employees

24 Subject to the approval of the board, the execu-
25 tive director shall appoint all employees, who shall
26 be subject to the Personnel Law.

27 §281. Reports

28 Each quarter, the executive director of the fund
29 shall make a report to the Governor of the business
30 done by the fund during the previous quarter and a
31 statement of the fund's resources and liabilities at
32 the close of that previous quarter. Copies of this
33 report shall be forwarded at the same time to the Su-
34 perintendent of Insurance, the President of the Sen-
35 ate and the Speaker of the House of Representatives.

36 §282. Declaration of public purpose

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

11 §283. General Fund money

12 All money appropriated to the fund from the Gen-
13 eral Fund shall be repaid within 5 years of the ap-
14 propriation, with interest at a rate equal to the
15 then prevailing rate being earned on ordinary General
16 Fund investments, except that no money may be repaid
17 before December 1, 1987.

18 Sec. 6. Effective date. This Act takes effect
19 on January 1, 1987.

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STATEMENT OF FACT

This bill establishes a competitive state workers' compensation fund which competes with private insurance and give Maine employers a choice to place their coverage with either private insurance carriers or through the state fund. Presumably, employers will place their coverage in the most cost-efficient fashion. An added advantage to those employers who choose to remain with private coverage would be that the private companies will be competing with the state fund, thus giving them an incentive to keep rates as low as possible.

Another advantage of a state fund is that statistics from other states with state funds show that the percentage of premiums returned as benefits to injured workers is substantially higher than is the case with private carriers. 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.

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