

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1328

6
7 H.P. 926

House of Representatives, April 16, 1985

8 Referred to the Committee on Labor. Sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Speaker Martin of Eagle Lake.

11 Cosponsored by President Pray of Penobscot, Representative Hayden of
Durham and Senator Perkins of Hancock.

12 STATE OF MAINE
13

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

17 AN ACT to Promote Occupational Health and
18 Safety.
19

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

22 Sec. 1. 5 MRSA §12004, sub-§8, ¶A, sub-¶(26) is
23 enacted to read:

24 (26) Labor Occupational Safety Expenses 26 MRSA §63
25 Loan Review Panel Only

26 Sec. 2. 26 MRSA §1, sub-§§1-A and 2-A are en-
27 acted to read:

28 1-A. Loan fund. "Loan fund" means the Occupa-
29 tional Safety Loan Fund.

30 2-A. Safety fund. "Safety fund" means the Safe-
31 ty Education and Training Fund.

32 Sec. 3. 26 MRSA §42-A is enacted to read:

1 §42-A. Safety education and training programs

2 1. Bureau to establish programs. The bureau
3 shall provide for the establishment and supervision
4 of programs for the education and training of employ-
5 ers, owners, employees, educators and students in the
6 recognition, avoidance and prevention of unsafe or
7 unhealthful working conditions in employment. The
8 bureau shall consult with and advise employers, own-
9 ers, employees and organizations representing employ-
10 ers, owners and employees as to effective means of
11 preventing occupational injuries and illnesses.

12 2. Safety education and training program func-
13 tions. The functions of the safety education and
14 training program shall include:

15 A. The development and application of a state-
16 wide safety education and training program to fa-
17 miliarize employers, supervisors, employees and
18 union leaders with techniques of accident inves-
19 tigation and prevention;

20 B. The development and utilization of consulta-
21 tive educational techniques to achieve long-range
22 solutions to occupational safety and health prob-
23 lems;

24 C. The acquisition, development and distribution
25 of occupational safety and health pamphlets,
26 booklets, brochures and other appropriate safety
27 and health media as may be useful to accomplish
28 the objectives of this section;

29 D. The development and administration of a pro-
30 gram for employers, with special emphasis on
31 small business employers, providing technical and
32 educational assistance on matters of occupational
33 safety and health;

34 E. The development and implementation of a
35 training and education program for bureau staff
36 engaged in the administration and enforcement of
37 this section; and

38 F. The conduct of other activities as necessary
39 for the implementation of an effective safety ed-
40 ucation and training program.

1 authorize or which are necessary or appropriate. All
2 money and securities in the safety fund shall be held
3 in trust by the Treasurer of State for the purpose of
4 funding the safety education and training program un-
5 der section 42-A and shall not be money or property
6 for the general use of the State. The fund shall not
7 lapse. The Treasurer of State shall notify the com-
8 missioner and the Legislature of interest credited
9 and the balance of the safety fund as of June 30th of
10 each year.

11 2. Source of funds. The commissioner shall an-
12 nually assess a levy based on the total actual annual
13 workers' compensation paid losses, excluding medical
14 payments, paid in the previous calendar year by em-
15 ployers under Title 39, the Workers' Compensation
16 Act. As soon as practicable after January 1, 1986,
17 the commissioner shall assess upon and collect from
18 each insurance carrier licensed to do workers' com-
19 ensation business in the State, and from each
20 self-insured employer authorized to make workers'
21 compensation payments directly to their employees, an
22 amount equal to 1/4 of 1% of the total workers' com-
23 ensation benefits, exclusive of medical payments,
24 paid by the insurance carrier or self-insured employ-
25 er during the previous calendar year. As soon as
26 practicable after January 1, 1987, and each year
27 thereafter, the commissioner shall assess upon and
28 collect from each carrier and self-insured employer a
29 sum equal to that proportion of the current fiscal
30 year's appropriation, exclusive of any federal funds,
31 for the safety education and training division which
32 the total workers' compensation benefits, exclusive
33 of medical payments, paid by each carrier or each
34 self-insured employer, bears to the total of the ben-
35 efits paid by all carriers and self-insured employ-
36 ers, during the previous calendar year, except that
37 the total amount levied annually shall not exceed 1/4
38 of 1% of the total of the compensation benefits paid
39 by all carriers and self-insured employers during the
40 previous calendar year.

41 3. Notice of assessments. Notice of the assess-
42 ments shall be sent by the Commissioner of Labor by
43 certified mail to each carrier and self-insured em-
44 ployer. Payment of assessments shall be received in
45 the principal office of the Department of Labor be-

1 fore a date specified uniformly in the notice, but
2 not less than 90 days after the date of the mailing.

3 4. Assessments constitute element of loss. The
4 levy assessment shall constitute an element of loss
5 for the purpose of establishing rates for workers'
6 compensation insurance. Funds derived from this levy
7 shall be deposited in the safety fund and shall be
8 appropriated by the Legislature for the operation of
9 this division.

10 §62. Occupational Safety Loan Fund

11 1. Establishment of fund. There is established
12 in the State Treasury a special fund known as the Oc-
13 cupational Safety Loan Fund, for the sole purpose of
14 making loans in accordance with section 63, and of
15 providing funds for the enforcement of that section.
16 The loan fund shall be administered by the commis-
17 sioner. The bureau shall have authority over the
18 loan fund and may do all things necessary or conven-
19 ient in the administration of the loan fund and
20 shall formulate and adopt rules pursuant to the Maine
21 Administrative Procedure Act, Title 5, chapter 375,
22 governing the administration, maintenance, loan dis-
23 bursements and loan repayments and collections of the
24 loan fund, and perform all other functions which the
25 laws of this State specifically authorize or which
26 are necessary or appropriate. All money and securi-
27 ties in the loan fund shall be held in trust by the
28 Treasurer of State for the purpose of making loans
29 under section 63 and shall not be money or property
30 for the general use of the State. The fund shall not
31 lapse.

32 2. Loans from fund. The loan fund is authorized
33 to make loans in accordance with section 63.

34 3. Source of fund. The loan fund shall be es-
35 tablished and maintained by funds received from the
36 following:

37 A. Funds from any bonds issued by the State for
38 the purpose of funding the loan fund;

39 B. Repayments of loans made by the loan fund and
40 accrued interest on those loans; and

1 C. Payments pursuant to Title 39, section 57-B.

2 §63. Occupational safety loans

3 The bureau may administer a statewide program to
4 make low interest loans to improve safety and promote
5 healthful working conditions in factories, workshops
6 and workplaces in this State. This program shall be
7 known as the Occupational Safety Loan Program.

8 1. Loan criteria. The bureau may promulgate
9 rules to implement the Occupational Safety Loan Pro-
10 gram which shall include, but not be limited to, the
11 following loan criteria:

12 A. The purpose of the loan shall be to improve,
13 install or erect equipment which reduces hazards
14 to and promotes the health and safety of workers;

15 B. Loans may be made to applicants with insuffi-
16 cient access to conventional sources of credit;

17 C. No loan may be made in an amount in excess of
18 \$15,000 to any single applicant, nor at a fixed
19 interest rate in excess of a rate equal to 2 per-
20 centage points below the prime rate in effect in
21 the Boston metropolitan area;

22 D. A majority vote of the loan review panel
23 shall be necessary to recommend approval of a
24 loan which shall then be transmitted to the bu-
25 reau for final disposition in accordance with the
26 policies adopted by the bureau;

27 E. Loan applications shall be reviewed by both
28 the loan review panel and the bureau for feasi-
29 bility, such as, for the general reasonableness
30 and safety need for the proposal, whether the ap-
31 plicant has sufficient capital, whether an ade-
32 quate safety analysis or other counseling re-
33 quirement has been completed, whether the appli-
34 cant is credit worthy within the scope of this
35 program and whether the collateral offered to se-
36 cure the loan is adequate;

37 F. Loans shall not be insured or guaranteed by
38 the State, but the bureau shall require collater-

1 al in the form of security for the loan, if
2 available, and may, in appropriate cases, take a
3 mortgage on real estate;

4 G. Loan applications shall be on forms and ac-
5 companied by additional information as required
6 by the bureau. Loan applicants may be required
7 to submit whatever personal or business related
8 financial information as may be necessary to de-
9 termine eligibility for the Occupational Safety
10 Loan Program; and

11 H. Loans shall not be approved without a prior
12 safety inspection by the division of industrial
13 safety and a recommendation by the division for
14 the installation of the safety device.

15 2. Loan review panel. The Occupational Safety
16 Loan Review Panel as established by Title 5, section
17 12004, subsection 8, shall consist of 6 members of
18 which 5 shall be appointed by the Governor. Of the
19 5 appointed members of the panel, one shall represent
20 employers; one shall represent employees; one shall
21 represent an insurance company licensed to insure
22 workers' compensation within the State; and 2 shall
23 represent the public. The 6th member of the board
24 shall be the commissioner. The term of office for
25 the appointed members shall be 4 years. In the first
26 appointment, 2 shall be appointed for a term of 2
27 years, 2 shall be appointed for a term of 3 years and
28 one shall be appointed for a term of 4 years. The
29 chairman shall be elected biennially by the members
30 of the board. Each member shall hold office until
31 his successor is duly appointed and qualified.

32 In case of a vacancy in board membership, the Gover-
33 nor shall appoint a member of the proper classifica-
34 tion to fill the unexpired term of the absent member.

35 The board shall meet at least twice yearly at the
36 State Capitol or any other place designated by the
37 chairman.

38 The 5 appointed members of the board shall be compen-
39 sated according to Title 5, chapter 379. The chair-
40 man of the board shall approve and countersign all
41 vouchers for expenditures under this section.

1 §64. Coverage

2 1. Application of chapter. This chapter applies
3 to all employers, employees and places of employment
4 in the State except the following:

5 A. Employees of the Federal Government; and

6 B. Working conditions of employees over which
7 federal agencies other than the United States De-
8 partment of Labor exercise statutory authority to
9 prescribe or enforce standards or regulations af-
10 fecting occupational safety and health.

11 2. Construction. Nothing in this chapter may be
12 construed to supersede or in any manner affect any
13 workers' compensation law or to enlarge, diminish or
14 affect in any manner common law or statutory rights,
15 duties or liabilities of employers or employees under
16 any law with respect to injuries, diseases or death
17 of employees arising out of and in the course of em-
18 ployment.

19 Sec. 5. 39 MRSA §57-B is enacted to read:

20 §57-B. Occupational Safety Loan Fund contributions

21 In every case of the death of any employee under
22 this Act where there is no person entitled to compen-
23 sation, the employer shall pay to the Treasurer of
24 State a sum equal to 250 times the average weekly
25 wage in the State as computed by the Maine Unemploy-
26 ment Insurance Commission for benefit of the Occupa-
27 tional Safety Loan Fund. These payments shall be in
28 addition to any other payments required to be made by
29 this Act.

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STATEMENT OF FACT

This bill addresses the critical issue of injuries being sustained by Maine's working men and women in Maine's factories, workshops and workplaces. The bill establishes a 2-pronged approach to this problem. The first prong is the creation and funding of a special safety, education and training program. The other prong is the creation and funding of an occupational safety loan program.

Section 1 of this bill amends the listing of state boards, agencies and the like by adding the Occupational Safety Loan Review Panel to that listing in the Maine Revised Statutes, Title 5, section 12004.

Section 2 of the bill adds 2 new paragraphs to Title 26, section 1, defining "safety fund" and "loan fund."

Section 3 of the bill creates Title 26, section 42-A. This section requires the Department of Labor to establish and supervise programs for employers, owners, employees, educators and students to aid in the recognition, avoidance and prevention of unsafe and unhealthful work conditions. This provision lists, without limiting, several functions to be performed by the safety, education and training program. They are:

1. The development of a statewide safety, education and training program;
2. The development of a long-range safety program in education, to reach students in all levels of education to improve their attitude toward and recognition of occupational safety;
3. The writing, purchase and distribution of pamphlets, books, brochures and other safety and health media promoting occupational safety;
4. The development and implementation of an occupational safety loan program for small business employers to provide both technical and educational assistance without charge;

1 5. The development and implementation of internal
2 training and education programs in the Department
3 of Labor for people involved with the new chapter;
4 and

5 6. Authority to perform other activities necessary
6 to make the safety program effective.

7 Section 3 gives the Department of Labor the mandate
8 to respond to requests from employees and employers for providing
9 safety training programs and mandates that those programs be
10 prioritized to deal first with occupations posing the greatest hazard
11 to the safety and health of the employees.
12

13 Section 3 requires the Department of Labor to
14 conduct continuing research into methods, techniques
15 and practices which would improve occupational safety
16 and health of employees.

17 Section 3 requires the bureau, upon request, to
18 provide a full range of safety and health consulting
19 services to any employer or employee group that requests
20 consultation.

21 Section 3 gives the bureau authority to provide
22 any of these programs by contracting with outside
23 providers, in either the public or private sector.

24 Section 4 of the bill provides funding for the
25 safety, education and training programs mandated by
26 Section 3. A nonlapsing special fund is established
27 in the State Treasury, known as the "Safety, Education
28 and Training Fund." The fund is administered by
29 the Commissioner of Labor.

30 The source of revenue for the safety fund is an
31 assessment in the amount of 1/4 of 1% of the total
32 benefits, excluding medical payments, paid by insurance
33 carriers, or self-insured employers, during calendar
34 year 1985. After the initial year, the amount
35 of the assessment will be tied to the amount allocated
36 by the Legislature for this program, however, that
37 assessment can not exceed 1/4 of 1%. Each carrier
38 and self-insurer will only pay their proportionate
39 share of the total assessment, thus providing an
40 additional incentive to employers, self-insured em-

1 ployers and workers' compensation insurance carriers
2 to provide safety in the workplaces they cover.

3 The other prong of this bill recognizes that in
4 many instances it is inaccessibility to capital which
5 inhibits installation of appropriate safety devices
6 in Maine factories and workplaces. The bill further
7 recognizes that it is most often the small employer
8 who has limited access to the necessary capital to
9 make these necessary health and safety improvements.
10 To remedy this, the Occupational Safety Loan Fund is
11 established. This is also a nonlapsing fund estab-
12 lished in the State Treasury and administered by the
13 Commissioner of Labor. It is established in section
14 3 of this bill.

15 Section 3 establishes within the Department of
16 Labor a statewide program of low-interest loans to
17 improve safety and promote healthful working condi-
18 tions in Maine's factories, workshops and workplaces.
19 Loans are limited to no more than \$15,000 to any sin-
20 gle applicant and must bear a fixed low-interest rate
21 not in excess of a rate equal to 2 points below the
22 prime rate in the Boston Metropolitan area. The
23 loans will be made only to applicants with insuffi-
24 cient access to conventional sources of credit and
25 must be solely for the purpose of improving, install-
26 ing or erecting equipment which reduces hazards to
27 and promotes the health and safety of workers.

28 These loans will not be insured or guaranteed by
29 the State, but the bureau may require collateral in
30 the form of security for the loans, if it's availa-
31 ble, and may, in appropriate cases, take a mortgage
32 on the applicant's real estate. Applicants will be
33 required to provide information to show that their
34 businesses do not have access to conventional sources
35 of capital in order to make the safety improvements.

36 The loans will only be approved if a safety in-
37 spection by the Division of Industrial Safety results
38 in a recommendation for the installation of the safe-
39 ty equipment for which the loan is being applied.

40 Loans are subject to approval by a special loan
41 review panel. The loan review panel is made up of 6
42 members. Five of the members are appointed by the

1 Governor. The Commissioner of Labor is the 6th mem-
2 ber of the board. One of the appointed members will
3 represent employers, one will represent employees and
4 one will represent an insurance company licensed to
5 insure workers' compensation in Maine. The other 2
6 appointed members will represent the public. The ap-
7 pointed members will serve terms of 4 years, and, in
8 the first appointment, 2 shall be appointed for
9 2-year terms and 2 shall be appointed for 3-year
10 terms and one appointed for a 4-year term. The mem-
11 bers of the loan review panel will be compensated for
12 their expenses.

13 The Occupational Safety Loan Fund will be funded
14 from a bond issue, if approved by the voters, and
15 from the payments generated in section 5 of the bill.

16 Section 4 clarifies the scope of this bill and
17 provides that it covers all employers, employees and
18 places of employment in the State, both public and
19 private, except those which are maintained by the
20 Federal Government, in which the employees are em-
21 ployees of the Federal Government, and further ex-
22 cepting working conditions of employees over whom
23 federal agencies other than the United States Depart-
24 ment of Labor exercise statutory authority to pre-
25 scribe standards or regulations affecting occupatio-
26 nal safety and health.

27 Section 4 also contains a saving clause which
28 provides that nothing in the bill will supersede or
29 in any manner affect any workers' compensation law or
30 any common law or statutory rights, duties or liabil-
31 ities of employers or employees, under any law with
32 respect to injuries, diseases or death of employees
33 arising out of and in the course of employment.

34 Section 5 establishes a special assessment to be
35 used to partially fund the Occupational Safety Loan
36 Fund. This special assessment is in the Maine Re-
37 vised Statutes, Title 39, and provides that in every
38 case where an employee dies in a job-related manner
39 under the Workers' Compensation Act and there is no
40 dependent entitled to receive compensation by reason
41 of that employee's death, the workers' compensation
42 insurance carrier or self-insured employer pays to
43 the Treasurer of State for deposit in the Occupation-

1 al Safety Loan Fund a sum equal to 250 times the
2 state average weekly wage.

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