

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No. 1708

S.P. 666

In Senate, December 20, 1985

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Secretary of the Senate on December 20, 1985. Referred to the Committee on Business and Commerce and 1,600 ordered printed pursuant to Joint Rule 14.

JOY J. O'BRIEN, Secretary of the Senate
Presented by President Pray of Penobscot.

Cosponsored by Representative Brannigan of Portland, Representative Murphy of Kennebunk and Senator Kerry of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SIX

AN ACT Concerning Self-insurance Pools Among
Public Agencies for Tort and Property
Liability.

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

Sec. 1. 14 MRSA §8116, first ¶, as amended by PL 1981, c. 602, §1, is further amended to read:

The legislative or executive body or any department of the State or any political subdivision may procure insurance against liability for any claim against it or its employees under this chapter and including any activity not described in this chapter, but for which immunity is waived by another act. If the insurance provides protection in excess of the limit of liability imposed by section 8105, then the limits provided in the insurance policy shall replace the limit imposed by section 8105. If the insurance provides coverage in areas where the governmental entity is immune, the governmental entity shall be lia-

1 ble in those substantive areas but only to the limits
2 of the insurance coverage. Reserve funds maintained
3 by a governmental entity or a public self-insurance
4 pool to meet obligations imposed by this Act shall
5 not increase the limits of liability imposed by section
6 8105.

7 Sec. 2. 14 MRSA §8116, 2nd ¶, as enacted by PL
8 1981, c. 602, §2, is amended to read:

9 A governmental entity or a public self-insurance
10 pool which self-insures against the obligations and
11 liabilities imposed by this Act shall designate funds
12 set aside to meet such obligations and liabilities as
13 self-insurance funds. Any such governmental entity
14 which self-insures under this Act shall maintain as
15 part of its public records a written statement which
16 shall include a provision setting forth the financial
17 limits of liability assumed by the governmental enti-
18 ty, those limits to be no less than the limits im-
19 posed in this Act, and a provision setting forth the
20 scope of the liability assumed by the governmental
21 entity, that scope to be no less than that imposed in
22 this Act.

23 Sec. 3. 24-A MRSA §402, sub-§1, as repealed and
24 replaced by PL 1969, c. 177, §5, is amended to read:

25 1. Reciprocal insurer. A "reciprocal" insurer is
26 an unincorporated aggregation of subscribers operat-
27 ing individually and collectively through an attor-
28 ney-in-fact common to all such persons to provide re-
29 ciprocal insurance among themselves. Any public
30 self-insurance pool operating under chapter 54 is not
31 an insurance company or insurer under the laws of
32 this State. The development, administration and pro-
33 vision of a public self-insurance pool's programs and
34 coverages do not constitute doing an insurance busi-
35 ness.

36 Sec. 4. 24-A MRSA c. 54 is enacted to read:

37 CHAPTER 54

38 PUBLIC SELF-INSURANCE POOLS

39 §3901. Intent

1 The Legislature finds and determines that insurance
2 protection is essential to the proper functioning
3 of this State's political subdivisions; that the
4 resources of political subdivisions are burdened by
5 the securing of that protection through standard carriers;
6 that proper risk management requires the
7 spreading of risk so as to minimize fluctuation in
8 insurance needs; and that all financial and administrative
9 contributions made by a political subdivision
10 to a public self-insurance pool, as authorized by Title
11 30, section 1917, and Title 30, chapter 203, are
12 made for a public and governmental purpose and that
13 these contributions benefit each contributing political
14 subdivision.

15 §3902. Political subdivision defined

16 A "political subdivision" means any city, town,
17 plantation, county, quasi-municipal corporation and
18 special purpose district, including, but not limited
19 to, any water district, sanitary district, hospital
20 district and school district of any type.

21 §3903. Public self-insurance pools; powers; limita-
22 tions

23 1. Coverage. Any public self-insurance pool
24 formed by 2 or more political subdivisions may provide
25 risk management and coverage for pool members
26 and employees of pool members, for acts or omissions
27 arising out of the scope of their employment, includ-
28 ing any or all of the following:

29 A. Casualty insurance, including general and
30 professional liabilities coverage, but excluding
31 workers' compensation insurance provided pursuant
32 to Title 39;

33 B. Property insurance, including marine insur-
34 ance and inland navigation, transportation, boiler
35 and machinery insurance coverage;

36 C. Automobile insurance and protection against
37 other liability and loss associated with the own-
38 ership of motor vehicles;

39 D. Surety and fidelity insurance coverage;

1 E. Umbrella and excess liability insurance cov-
2 erage; and

3 F. Environmental impairment insurance coverage.

4 2. Limitations. Any public self-insurance pool
5 may not provide for hospital, medical, surgical or
6 dental benefits to the employees of the member polit-
7 ical subdivisions in the pool, except when those ben-
8 efits arise from the obligations and responsibilities
9 of the pool in providing automobile insurance cov-
10 erage and protection against other liability and loss
11 associated with the ownership of motor vehicles.

12 3. Excess insurance; reinsure risk. A public
13 self-insurance pool shall obtain excess insurance or
14 reinsure risk and may assume, cede and sell risk for
15 coverages set forth in subsection 1.

16 4. General powers. A public self-insurance
17 pool, for the purposes of carrying on the business of
18 the public self-insurance pool whether or not a body
19 corporate, may sue or be sued; make contracts; hold
20 and dispose of real property; and borrow money, con-
21 tract debts and pledge assets in the name of the pub-
22 lic self-insurance pool.

23 5. Establishment as separate legal or adminis-
24 trative entity. The public self-insurance pool may
25 be established as a separate legal or administrative
26 entity for purposes of effectuating public self-
27 insurance pool agreements.

28 §3904. Public self-insurance pool not insurance com-
29 pany

30 Any public self-insurance pool operating under
31 this chapter is not an insurance company or insurer
32 under the laws of this State. The development, ad-
33 ministration and provision of public self-insurance
34 pool programs and coverages authorized by section
35 3903, subsection 1, by the governing authority cre-
36 ated to administer the pool does not constitute doing
37 an insurance business.

38 §3905. Contact establishing public self-insurance
39 pool; provisions

1 1. Provisions to be included in contract. Any
2 contract entered into by 2 or more political subdivi-
3 sions for the purposes of establishing a public self-
4 insurance pool shall provide:

5 A. A financial plan which sets forth in general
6 terms:

7 (1) The insurance coverages to be offered
8 by the public self-insurance pool, applica-
9 ble deductible levels and the maximum level
10 of claims which the pool will self-insure;

11 (2) The amount of cash reserves to be set
12 aside for the payment of claims;

13 (3) The amount of insurance to be purchased
14 by the pool to provide coverage over and
15 above the claims which are not satisfied di-
16 rectly from the pool's resources; and

17 (4) The amount of aggregate excess insur-
18 ance coverage to be purchased in the event
19 that the pool's resources are exhausted in a
20 given fiscal period which shall be, at a
21 minimum, in the amount of \$1,000,000; and

22 B. A plan of management which provides for all
23 of the following:

24 (1) The means of establishing the governing
25 authority of the pool;

26 (2) The responsibilities of the governing
27 authority with regard to fixing contribu-
28 tions to the pool, maintaining reserves,
29 levying and collecting assessments for defi-
30 ciencies, disposal of surpluses and adminis-
31 tering the pool in the event of termination
32 or insolvency;

33 (3) The basis upon which new members may be
34 admitted to, and existing members leave, the
35 pool;

36 (4) The identification of funds and re-
37 serves by exposure area;

1 (5) Other provisions necessary or desirable
2 for the operation of the pool; and

3 (6) The selection of a governing authority,
4 which shall be a board of directors for the
5 pool, a majority of whom shall be elected or
6 appointed officials of pool members.

7 §3906. Audit requirements

8 1. Filing of audited financial statements. Each
9 public self-insurance pool created in this State
10 shall file with the members of the pool, within 120
11 days after the end of the pool's fiscal year, audited
12 financial statements certified by an independent cer-
13 tified public accountant. Two additional copies of
14 the audited financial statements shall be filed with
15 the superintendent.

16 2. Failure to provide for audited financial
17 statements. If a public self-insurance pool fails to
18 provide for the audited financial statements required
19 by subsection 1, the superintendent shall perform the
20 audit and the public self-insurance pool shall reim-
21 burse the superintendent for the cost of the audit.

22 STATEMENT OF FACT

23 Municipalities and other political subdivisions
24 have found it increasingly difficult, if not impossi-
25 ble, to purchase tort and property liability coverage
26 from the commercial insurance market.

27 The nature of the services a municipality pro-
28 vides makes its risk virtually indefinable. A mu-
29 nicipality cannot avoid risk by discontinuing a par-
30 ticular service. Federal and state laws mandate the
31 assumption of risks by municipalities.

32 An option being considered by municipalities is
33 to pool their risks with other municipalities and po-
34 litical subdivisions through the creation of a group
35 self-insurance plan. Although current state law al-
36 lows municipalities to create such a pool through the
37 Interlocal Cooperation Act, the law is silent on how

1 such a pool would function and be regulated, thereby
2 treating it generally like an insurance company.

3 It is impractical to regulate such a pool as an
4 insurance company. Municipalities and other politi-
5 cal subdivisions are not like private insurers. Mu-
6 nicipalities cannot relocate and they, in practical
7 terms, have unlimited assets. The Maine Insurance
8 Code does not recognize the real differences between
9 a public and private insurer. It would be impracti-
10 cal, for instance, to force municipalities to capi-
11 talize themselves or a group of themselves.

12 This bill makes it clear that public self-
13 insurance pools created to provide tort and property
14 liability coverage are not insurance companies and
15 are not to be regulated as private insurers.

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