

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1909

6  
7 S.P. 745

In Senate, January 20, 1986

8 Submitted by the Department of Business, Occupational and Professional  
9 Regulation pursuant to Joint Rule 24.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

11 Cosponsored by Representative Cote of Auburn, Senator Kerry of York  
and Representative Stevens of Bangor.

12 STATE OF MAINE  
13

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

17 AN ACT to Establish Standards for Public  
18 Employers for Approval as Workers'  
19 Compensation Self-insurers.  
20

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

23 Sec. 1. 39 MRSA §23, sub-§2, as amended by PL  
24 1985, c. 446, §4, is further amended to read:

25 2. By furnishing satisfactory proof to the Su-  
26 perintendent of Insurance of his solvency and finan-  
27 cial ability to pay the compensation and benefits,  
28 and deposit cash, satisfactory securities or a secu-  
29 rity bond, with the Workers' Compensation Commission,  
30 in such sum as the superintendent may determine pur-  
31 suant to subsection 6; such bond to run to the Treas-  
32 urer of State and his successor in office, and to be  
33 conditional upon the faithful performance of this Act  
34 relating to the payment of compensation and benefits  
35 to any injured employee. In case of cash being depos-  
36 ited, it shall be placed at interest by the Treasurer

1 of State, and the accumulation of interest on said  
2 cash or securities so deposited shall be paid to the  
3 employer depositing the same. The superintendent may  
4 at any time, upon not less than 3 days notice and  
5 following hearing, for cause deny to an employer the  
6 right to continue in the exercise of the option  
7 granted by this section.

8 As an alternative to the method described in the  
9 first paragraph of this subsection, an eligible em-  
10 ployer may establish an actuarially funded trust,  
11 funded at a level sufficient to discharge those obli-  
12 gations incurred by the employer pursuant to this Act  
13 as they become due and payable from time to time,  
14 provided that the value of trust assets shall be at  
15 least equal to the present value of such incurred  
16 claims. The trust asset shall consist of cash or  
17 marketable securities of a type and risk character as  
18 specified in subsection 7, and shall have a situs in  
19 the United States. In all other respects, the trust  
20 instrument, including terms for certification, fund-  
21 ing, designation of trustee and pay out shall be as  
22 approved by the superintendent; provided, that the  
23 value of the trust account shall be actuarially cal-  
24 culated at least annually and adjusted to the re-  
25 quired level of funding. For purposes of this para-  
26 graph, an "eligible employer" is one who is found by  
27 the superintendent to be capable of paying compensa-  
28 tion and benefits required by this Act and:

29 A. Has positive net earnings; or

30 B. Can demonstrate a level of working capital  
31 adequate to its operating needs.

32 Notwithstanding any provision of this section or  
33 chapter, any bond or security deposit required of a  
34 public employer which is a self-insurer shall not ex-  
35 ceed \$50,000, provided that such public employer has  
36 ~~a net worth equal to or in excess of \$25,000,000 and~~  
37 ~~a state-assessed valuation equal to or in excess of~~  
38 ~~\$300,000,000 and provided that the public employer~~  
39 ~~possesses and maintains in its general fund account~~  
40 ~~balance an amount reserved for the exclusive interest~~  
41 ~~of workers' compensation claimants, that reservation~~  
42 ~~of funds to be provided in a minimum value at least~~  
43 ~~equal to 250% of workers' compensation benefits re-~~

1 sulting from claims asserted against the employer  
2 which have been acknowledged and for which values  
3 have been established by the employer. "Public em-  
4 ployer" includes the State, the University of Maine,  
5 counties, cities and towns.

6 In his consideration of a self-insuring entity's ap-  
7 plication for authorization to operate a plan of  
8 self-insurance, the superintendent may require or  
9 permit an applicant to employ valid risk transfer by  
10 the utilization of primary excess insurance. Stan-  
11 dards respecting the application of primary excess  
12 insurance shall be contained in a regulation promul-  
13 gated by the superintendent pursuant to the Maine Ad-  
14 ministrative Procedure Act, Title 5, chapter 375.  
15 Primary excess insurance shall be defined as insur-  
16 ance covering workers' compensation exposures in ex-  
17 cess of risk retained by a self-insurer.

18 Sec. 2. 39 MRSA §69, as amended by PL 1983, c.  
19 479, §12, is further amended to read:

20 §69. Preference of claims

21 A claim for compensation under this Act, and any  
22 compensation payment scheme therefor, shall be enti-  
23 tled to a preference over the unsecured debts of the  
24 employer to the same amount as the wages of labor are  
25 preferred by the laws of this State. Nothing ~~herein~~  
26 ~~shall~~ in this section may be construed as impairing  
27 any lien which the employee may have acquired. To  
28 the extent that a self-insuring employer has made  
29 provision for claims settlements with employees enti-  
30 tled to benefits under this Act and those values are  
31 so reflected in reserves held by the employer, in-  
32 cluding reserved surplus funds for public employers,  
33 claimants under this Act shall be vested with an ex-  
34 clusive right to payment from the provisions to the  
35 extent their interests may appear.

1

STATEMENT OF FACT

2           Currently, large public employers, defined as  
3 those public entities permitted to self-insure work-  
4 ers' compensation exposures while possessed of a net  
5 worth of at least \$25,000,000 and a state-assessed  
6 valuation base of at least \$300,000,000, are exempted  
7 from the purchase of primary excess insurance con-  
8 tracts, from participation in the Maine Self-  
9 Insurance Guarantee Association and from the require-  
10 ment to provide security to claimants through either  
11 deposits or surety bonds in amounts greater than  
12 \$50,000.

13           This bill establishes new standards for those em-  
14 ployers to meet in support of their workers' compen-  
15 sation self-insurance undertakings. This entails a  
16 demonstrated ability to fund claims expense for op-  
17 erating a self-insured retention plan in the alterna-  
18 tive to securing of claimants benefits through provi-  
19 sion of surety bonding or deposit funds greater than  
20 \$50,000.

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