

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 666, L.D. 1708)  
2 (New Title)  
3 SECOND REGULAR SESSION  
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE  
6

7 Legislative Document

No. 2263

8  
9 S.P. 902

In Senate, March 26, 1986

10 Reported by Senator Bustin of Kennebec from the Committee on  
11 Business and Commerce and printed under Joint Rule 2. Original bill  
12 sponsored by President Pray of Penobscot. Cosponsored by Representative  
Brannigan of Portland, Representative Murphy of Kennebunk and Senator  
Kerry of York.

JOY J. O'BRIEN, Secretary of the Senate

13  
14 STATE OF MAINE  
15

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-SIX  
18

19 AN ACT Concerning Self-funded Pools among  
20 Public Agencies for Tort and Property  
21 Liability.  
22

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

25 Sec. 1. 14 MRSA §8116, first ¶, as amended by PL  
26 1981, c. 602, §1, is further amended to read:

27 The legislative or executive body or any depart-  
28 ment of the State or any political subdivision may  
29 procure insurance against liability for any claim  
30 against it or its employees under this chapter and  
31 including any activity not described in this chapter,  
32 but for which immunity is waived by another act. If  
33 the insurance provides protection in excess of the  
34 limit of liability imposed by section 8105, then the  
35 limits provided in the insurance policy shall replace  
36 the limit imposed by section 8105. If the insurance

1 provides coverage in areas where the governmental en-  
2 tity is immune, the governmental entity shall be lia-  
3 ble in those substantive areas but only to the limits  
4 of the insurance coverage. Reserve funds, excess in-  
5 insurance or reinsurance contracts maintained by a gov-  
6 ernmental entity or a public self-funded pool to meet  
7 obligations imposed by this Act shall not increase  
8 the limits of liability imposed by section 8105.

9 Sec. 2. 14 MRSA §8116, 2nd ¶, as enacted by PL  
10 1981, c. 602, §2, is amended to read:

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

26 Sec. 3. 20-A MRSA §1001, sub-§5-A is enacted to  
27 read:

28 5-A. Public self-funded pools. They may partici-  
29 pate in a public self-funded pool created under Title  
30 30, chapter 203-B.

31 Sec. 4. 24-A MRSA §402, sub-§1, as repealed and  
32 replaced by PL 1969, c. 177, §5, is amended to read:

33 1. Reciprocal insurer. A "reciprocal" insurer is  
34 an unincorporated aggregation of subscribers operat-  
35 ing individually and collectively through an attor-  
36 ney-in-fact common to all such persons to provide re-  
37 ciprocal insurance among themselves. Any public  
38 self-funded pool operating under Title 30, chapter  
39 203-B is not an insurance company or insurer under  
40 the laws of this State. The development, administra-

1 tion and provision of a public self-funded pool's  
2 programs and coverages do not constitute doing an in-  
3 urance business.

4 Sec. 5. 30 MRSA c. 203-B is enacted to read:

5 CHAPTER 203-B

6 PUBLIC SELF-FUNDED POOLS

7 §1971. Intent

8 The Legislature finds and determines that insur-  
9 ance protection is essential to the proper function-  
10 ing of this State's political subdivisions; that the  
11 resources of political subdivisions are burdened by  
12 the securing of that protection through standard car-  
13 riers; that the services provided by this State's po-  
14 litical subdivisions are vital to the people of the  
15 State; and that all financial and administrative con-  
16 tributions made by a political subdivision to a pub-  
17 lic self-funded pool, as authorized by section 1917  
18 and chapter 203 and created under this chapter, are  
19 made for a public and governmental purpose and that  
20 the contributions benefit each contributing political  
21 subdivision.

22 §1972. "Political subdivision" defined

23 A "political subdivision" means any city, town,  
24 plantation, county, quasi-municipal corporation and  
25 special purpose district, including, but not limited  
26 to, any water district, sanitary district, hospital  
27 district, municipal electric utility and school ad-  
28 ministrative unit. "School administrative unit" shall  
29 have the same meaning as that found in Title 20-A,  
30 section 1, subsection 26.

31 §1973. Public self-funded pools; powers; limitations

32 1. Coverage. Any public self-funded pool formed  
33 by 10 or more municipalities or school administrative  
34 units or an organization representing 10 or more po-  
35 litical subdivisions may provide risk management and  
36 coverage for pool members and employees of pool mem-  
37 bers, for acts or omissions arising out of the scope  
38 of their employment, including any or all of the fol-  
39 lowing:

1 A. Casualty insurance, including general and  
2 professional liabilities coverage, but excluding  
3 workers' compensation insurance provided pursuant  
4 to Title 39;

5 B. Property insurance, including marine insur-  
6 ance and inland navigation, transportation, boiler  
7 and machinery insurance coverage;

8 C. Automobile insurance and protection against  
9 other liability and loss associated with the own-  
10 ership of motor vehicles;

11 D. Surety and fidelity insurance coverage; and

12 E. Environmental impairment insurance coverage.

13 2. Limitations. Any public self-funded pool may  
14 not provide for hospital, medical, surgical or dental  
15 benefits to the employees of the member political  
16 subdivisions in the pool except when those benefits  
17 arise from the obligations and responsibilities of  
18 the pool in providing automobile insurance coverage  
19 and protection against other liability and loss asso-  
20 ciated with the ownership of motor vehicles.

21 3. Excess insurance; reinsurance. A public  
22 self-funded pool shall obtain excess insurance or re-  
23 insurance. Aggregate excess insurance to be purchased  
24 by the pool under its plan shall be bound prior to  
25 the effective date of the plan. The insurance shall  
26 limit the exposure of the pool to a defined level  
27 both as to ultimate claims values and loss ratio at  
28 which recovery from the insurer will be realized. The  
29 attachment point of continuing aggregate excess cov-  
30 erage shall provide risk relief to the plan adequate  
31 to its financing needs.

32 4. Amounts to be paid when coverage issues. Any  
33 member joining the pool before the effective date of  
34 the plan or during the first year of operation must  
35 pay not less than 25% of the first year's annual con-  
36 tribution before coverage becomes effective.

37 5. Underwriting guidelines. Prior to the opera-  
38 tion of the pool's plan, underwriting guidelines  
39 shall be adopted which embody rate charges to pro-

1 spective members at a level adequate to its financial  
2 needs as certified by the pool's actuary. Fixed costs  
3 of operations shall likewise be covered for the first  
4 prospective fund year and an overlay sufficient to  
5 reasonably meet immediate claims costs shall be held  
6 in a separate account to be used solely for this pur-  
7 pose.

8       6. Actuarial advisory opinion. Prior to the op-  
9 eration of the pool's plan, the pool must obtain an  
10 independent actuarial advisory opinion report given  
11 by a member of the American Academy of Actuaries  
12 qualified as a casualty loss reserve specialist as  
13 defined by the National Association of Insurance Com-  
14 missioners. Two copies of this report shall be filed  
15 with the Superintendent of Insurance; one copy shall  
16 be filed with each individual member of the board of  
17 directors; and one copy shall be provided to each  
18 prospective pool member. The report shall address:

19       A. The financial viability of the plan; and

20       B. Ultimate risk exposures attendant to each  
21 line being underwritten by the plan.

22       7. General powers. A public self-funded pool,  
23 for the purposes of carrying on the business of the  
24 public self-funded pool whether or not a body corpo-  
25 rate, may sue or be sued; make contracts; hold and  
26 dispose of real property; and borrow money, contract  
27 debts and pledge assets in the name of the public  
28 self-funded pool.

29       8. Establishment as separate legal or adminis-  
30 trative entity. The public self-funded pool may be  
31 established as a separate legal or administrative en-  
32 tity for purposes of effectuating public self-funded  
33 pool agreements.

34 §1974. Public self-funded pool not insurance company

35       Any public self-insurance pool operating under  
36 this chapter is not an insurance company, reciprocal  
37 insurer or insurer under the laws of this State. The  
38 development, administration and provision of public  
39 self-funded pool programs and coverages authorized by  
40 section 1973, subsection 1, by the governing authori-

1 ty created to administer the pool does not constitute  
2 doing an insurance business.

3 §1975. Contract establishing public self-funded  
4 pool; provisions

5 1. Provisions to be included in contract. Any  
6 contract entered into under this chapter shall pro-  
7 vide:

8 A. A financial plan setting forth in general  
9 terms:

10 (1) The insurance coverages to be offered  
11 by the public self-funded pool; applicable  
12 deductible levels; and the maximum level of  
13 claims which the pool will self-insure;

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

16 (3) The amount of insurance to be purchased  
17 by the pool to provide coverage over and  
18 above the claims which are not satisfied di-  
19 rectly from the pool's resources and the  
20 terms of that policy set forth in section  
21 1973, subsection 3; and

22 (4) The amount of aggregate excess insur-  
23 ance coverage to be purchased; and

24 B. A plan of management which provides for all  
25 of the following:

26 (1) The means of establishing the governing  
27 authority of the pool;

28 (2) The responsibility of the governing au-  
29 thority with regard to fixing contributions  
30 to the pool, maintaining reserves, levying  
31 and collecting assessments for deficiencies,  
32 disposal of surpluses and administering the  
33 pool in the event of termination of insol-  
34 veny;

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

1                   (4) The identification of funds and re-  
2                   erves by exposure area;

3                   (5) Other provisions necessary or desirable  
4                   for the operation of the pool; and

5                   (6) The selection of a governing authority,  
6                   which shall be a board of directors for the  
7                   pool, a majority of whom shall be elected or  
8                   appointed officials of pool members and 2 of  
9                   whom shall be public members from the areas  
10                  served by the pool who are not currently  
11                  servng as either elected or appointed offi-  
12                  cial; and

13                  C. A provision that if the assets of a public  
14                  self-funded pool are at any time actuarially deter-  
15                  mined to be insufficient to enable the pool to  
16                  discharge its legal liabilities and other obliga-  
17                  tions and to maintain actuarially sound reserves,  
18                  it shall within 30 days make up the deficiency or  
19                  levy a prorated assessment upon its members for  
20                  the amount needed to make up the deficiency.

21                  Members of the pool shall be given 30 days notice  
22                  of any assessment due.

23                  The contract must provide sanctions for any fail-  
24                  ure to comply with a mandatory assessment.

25                  §1976. Audit requirements

26                  1. Filing of audited financial statements. Each  
27                  public self-funded pool created in this State shall  
28                  file with the members of the pool, on or before the  
29                  last day of the 6th month following the end of the  
30                  pool's fiscal year, audited financial statements cer-  
31                  tified by an independent certified public accountant.  
32                  The financial statement shall include, but not be  
33                  limited to, actuarially certified appropriate re-  
34                  serves for known claims and expenses associated with  
35                  those claims, claims incurred but not reported and  
36                  expenses associated with those claims, unearned pre-  
37                  miums and reserve for bad debts.

38                  The audited financial statement shall include infor-  
39                  mation concerning the adequacy of the plan. This re-



1 port shall result from a charge by the directors to  
2 the plan's actuary and auditor and shall address ex-  
3 cess insurance, charges for coverage to members, ser-  
4 vice agents' costs and costs of administration of the  
5 program.

6 The actuarial opinion shall be given by a member of  
7 the American Academy of Actuaries qualified as a ca-  
8 sualty loss reserve specialist as defined by the Na-  
9 tional Association of Insurance Commissioners. Two  
10 additional copies of the audited financial statements  
11 shall be filed with the Superintendent of Insurance.

12 2. Failure to provide for audited financial  
13 statements. If a public self-funded pool fails to  
14 provide for the audited financial statements required  
15 by subsection 1, the Superintendent of Insurance  
16 shall perform or cause to be performed the audit and  
17 the public self-funded pool shall reimburse the Su-  
18 perintendent of Insurance for the cost of the audit.

19 STATEMENT OF FACT

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

24 The nature of the services a municipality pro-  
25 vides makes its risk virtually undefinable. A munic-  
26 ipality can't avoid risk by discontinuing a particu-  
27 lar service. Federal and state laws mandate the as-  
28 sumption of risks by municipalities.

29 An option being considered by municipalities is  
30 to pool their risk with other municipalities and po-  
31 litical subdivisions through the creation of a group  
32 self-insurance plan. Although current state law al-  
33 lows municipalities to create such a pool through the  
34 Interlocal Cooperation Act, the law is silent on how  
35 such a pool would function and be regulated, thereby  
36 treating it generally like an insurance company.

37 It is impractical to regulate such a pool as an  
38 insurance company. Municipalities and other political

1 subdivisions are not like private insurers. Munici-  
2 palities cannot relocate and they, in practical  
3 terms, have unlimited assets. The Maine Insurance  
4 Code does not recognize the real differences between  
5 a public and private insurer. It would be impractical  
6 to force municipalities to capitalize themselves or a  
7 group of themselves.

8 This new draft makes it clear that public self  
9 insurance pools created to provide tort and property  
10 liability coverage are not insurance companies and  
11 are not to be regulated as private insurers.

12 This new draft establishes specific sets of cri-  
13 teria that a public self-insurance pool must meet in  
14 order to be created. This new draft also creates  
15 stringent audit requirements to be overseen by the  
16 Bureau of Insurance. This new draft adds several  
17 checks and balances to make sure plans operate effi-  
18 ciently.

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