

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND THIRTEENTH LEGISLATURE
4

5 Legislative Document

No. 130
6

7 S.P. 63 In Senate, January 28, 1987
8

9 Reference to the Committee on Banking and Insurance
suggested and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BUSTIN of Kennebec.

11 Cosponsored by Senator COLLINS of Aroostook,
Representative SIMPSON of Casco, Representative O'GARA of
Westbrook.

12 STATE OF MAINE
13

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

17 AN ACT to Amend the Requirements for
18 Individual Public Self-insurers under
19 the Workers' Compensation Act.
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. 779, §85, is further amended to read:

25 2. Proof of solvency and financial ability to
26 pay; trust. By furnishing satisfactory proof to the
27 Superintendent of Insurance of his solvency and fi-
28 nancial ability to pay the compensation and benefits,
29 and deposit cash, satisfactory securities or a secu-
30 rity bond, with the Workers' Compensation Commission,
31 in such sum as the superintendent may determine pur-
32 suant to subsection 6; such bond to run to the Treas-
33 urer of State and his successor in office, and to be

1 conditional upon the faithful performance of this Act
2 relating to the payment of compensation and benefits
3 to any injured employee. In case of cash being depos-
4 ited, it shall be placed at interest by the Treasurer
5 of State, and the accumulation of interest on said
6 cash or securities so deposited shall be paid to the
7 employer (depositing the same. The superintendent may
8 at any time, upon not less than 3 days notice and
9 following hearing, for cause deny to an employer the
10 right to continue in the exercise of the option
11 granted by this section.

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

- 33 A. Has positive net earnings; or
- 34 B. Can demonstrate a level of working capital
- 35 adequate to its operating needs.

36 Notwithstanding any provision of this section or
37 chapter, any bond or security deposit required of a
38 public employer which is a self-insurer shall not ex-
39 ceed \$50,000, provided that such public employer has
40 a net worth equal to or in excess of \$25,000,000 or
41 bond rating equal to or in excess of the 2nd highest
42 standard set by a national bond rating firm and a
43 state-assessed valuation equal to or in excess of

1 \$300,000,000. "Public employer" includes the State,
2 the University of Maine System, counties, cities and
3 towns.

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

16 Sec. 2. 39 MRSA §23, sub-§2-A, as amended by PL
17 1983, c. 668, §2, is further amended to read:

18 2-A. Group self-insurers; application. Except
19 for the provision relating to individual public em-
20 ployer self-insurers, subsection 2 shall be equally
21 applicable in all respects to group self-insurers.
22 Any employer or group of employers desiring to become
23 a self-insurer shall submit to the Superintendent of
24 Insurance with an application for self-insurance, in
25 a form prescribed by the superintendent the follow-
26 ing:

27 A. A payroll report for each participating em-
28 ployer of the group for 3 preceding annual fiscal
29 periods;

30 B. A report of compensation losses incurred,
31 payments plus reserves, by each participating em-
32 ployer of the group for the corresponding 3 annu-
33 al periods;

34 C. A sworn itemized statement of the group's as-
35 sets and liabilities; satisfactory proof of fi-
36 nancial ability to pay compensation for the em-
37 ployers participating in the group plan; the
38 group's reserves, their source and assurance of
39 continuance;

1 D. A description of the safety organization
2 maintained by the employer or group for the pre-
3 vention of injuries;

4 E. A statement showing the kind of operations
5 performed or to be performed; and

6 F. Any and all agreements, contracts or other
7 pertinent documents relating to the organization
8 of the employers in the group.

9 If, upon examination of the sworn financial statement
10 and other data submitted, the superintendent is sat-
11 isfied as to the ability of the employer or group to
12 make current compensation payments and that the em-
13 ployer's or group's tangible assets make reasonably
14 certain the payment of all obligations that may arise
15 under the Workers' Compensation Law Act, the applica-
16 tion shall be granted subject to the terms and condi-
17 tions setting out the exposure of cash deposits or
18 securities or an acceptable surety bond, all as re-
19 quired by the superintendent. Security against shock
20 or catastrophe loss shall be provided either by de-
21 positing securities with the Workers' Compensation
22 Commission in such amount as the superintendent may
23 determine, or by filing with the superintendent and
24 the Workers' Compensation Commission an insurance
25 carrier's certificate of a standard self-insurer's
26 primary excess contract issued to the self-insurer or
27 group in form approved by the superintendent, provid-
28 ing coverage against losses arising out of one injury
29 in such amounts as the superintendent may determine,
30 or a combination of the foregoing, satisfactory to
31 the superintendent. Notwithstanding any provision of
32 this section or chapter, no specific or aggregate ex-
33 cess insurance shall be required of any individual
34 public employer who is self-insured and has a net
35 worth equal to or in excess of \$25,000,000 or bond
36 rating equal to or in excess of the 2nd highest stan-
37 dard set by a national bond rating firm and a
38 state-assessed valuation equal to or in excess of
39 \$300,000,000.

40 Yearly reports in a form prescribed by the superin-
41 tendent shall be filed by each self-insurer or group.
42 The superintendent may, in addition, require the fil-
43 ing of quarterly financial status reports whenever he

1 has reason to believe that there has been a deterio-
2 ration in the financial condition of either an indi-
3 vidual or group self-insurer which adversely affects
4 the individual's or group's ability to pay expected
5 losses. ~~Said~~ The reports shall be filed within 30
6 days after the superintendent's request, or at such
7 time as the superintendent shall otherwise set.

8 After approving any application for self-insurance,
9 the superintendent shall promptly notify the Workers'
10 Compensation Commission and forward to it copies of
11 the application and all supporting materials.

12 Sec. 3. 39 MRSA §23-A, sub-§2, as amended by PL
13 1981, c. 637, §3, is further amended to read:

14 2. Created; legal entity. There is created a ~~non~~
15 ~~profit~~ nonprofit unincorporated legal entity to be
16 known as the Maine Self-Insurance Guarantee Associa-
17 tion. All self-insurers, as defined in this Title,
18 shall be and remain members of the association as a
19 condition of authority to self-insurer in this State,
20 except that all of public employers which are indi-
21 vidual self-insurers, with a net worth equal to or in
22 excess of \$25,000,000 or bond rating equal to or in
23 excess of the 2nd highest standard set by a national
24 bond rating firm and in the case of counties, cities
25 and towns, a state-assessed valuation equal to or in
26 excess of \$300,000,000 shall not be subject to this
27 subsection. The association shall perform its func-
28 tions under a plan of operation established or
29 amended, or both, and approved by the superintendent
30 and shall exercise its powers through the board of
31 directors established in this section.

32 A. A self-insurer shall be deemed to be a member
33 of the association for purposes of another
34 self-insurer's insolvency, as defined in subsec-
35 tion 6, when:

36 (1) The self-insurer is a member of the as-
37 sociation when an insolvency occurs, ~~or~~; or

38 (2) The self-insurer has been a member of
39 the association at some point in time during
40 the 12-month period immediately preceding
41 the insolvency in question.

1 B. A self-insurer shall be deemed to be a member
2 of the association for purposes of its own insol-
3 vency when:

4 (1) The self-insurer is a member of the as-
5 sociation when the insolvency occurs, but
6 claim. relating to a compensable event which
7 occurred prior to the date the self-insurer
8 joined the association are not included
9 hereunder; or

10 (2) The self-insurer becomes insolvent af-
11 ter leaving the association, but claims re-
12 lating to a compensable event which occurred
13 prior to the date the self-insurer joined
14 the association are not included hereunder,
15 and claims relating to a compensable event
16 which occurred after the self-insurer ceased
17 to be an approved self-insurer are not to be
18 afforded coverage hereunder.

19 C. In determining the membership of the associa-
20 tion pursuant to paragraphs A and B for any date
21 after January 1, 1983, no employer claiming self-
22 insurer status may be deemed to be a member of
23 the association on any date after January 1,
24 1983, unless that employer is at that time regis-
25 tered as a self-insurer by the superintendent
26 pursuant to section 23, subsection 11.

27 STATEMENT OF FACT

28 This bill eliminates any reference to a public
29 employer's "net worth," under the Workers' Compensa-
30 tion Act requirements for self-insurance. A munici-
31 pality, for instance, has no "assets" like an insur-
32 ance company that it could liquidate to meet its ob-
33 ligations. A city hall, a fire station or a school
34 building are not marketable assets, unless they are
35 unused and could be converted to another use.

36 A municipality's ability to pay its injured work-
37 ers is better measured by the value of its tax base
38 and the requirement that the municipality have a

1 state valuation equal to or in excess of \$300,000,000
2 would remain unchanged.

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