

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 835

H.P. 617 House of Representatives, March 18, 1987
Reference to the Committee on Banking and Insurance
suggested and ordered printed.

EDWIN H. PERT, Clerk
Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Representatives BAKER of Portland, McHENRY
of Madawaska, and Senator BUSTIN of Kennebec.

STATE OF MAINE

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

1 AN ACT to Provide for Competitive State
2 Funding of Workers' Compensation.
3

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

6 Sec. 1. 5 MRSA §12004, sub-§7, sub-¶(11) is en-
7 acted to read:

8 (11) Workers' Compensation \$30/day 39 MRSA §271
9 Insurance Fund Board and
10 Expenses

11 Sec. 2. 39 MRSA §22-C, sub-§§1 and 2, as reallo-
12 cated by PL 1983, c. 816, Pt. B, §23, are amended to
13 read:

1 1. Policies. Every insurance company issuing
2 workers' compensation insurance policies covering the
3 payment of compensation and benefits provided for in
4 this Act and the Workers' Compensation Insurance Fund
5 shall file with the Superintendent of Insurance:

6 A. A copy of the form of the policies. A policy
7 may not be issued until the superintendent has
8 approved the form; and

9 B. Its classification of risks and their premium
10 rates and any subsequent proposed classifications
11 and premium rates, which may not take effect un-
12 til the superintendent has approved them.

13 Premium rates less than those approved may be used
14 and filed with the superintendent. If the superin-
15 tendent has reason to believe that the filing
16 produces rates which are inadequate or unfairly dis-
17 criminatory, he may disapprove them under Title 24-A,
18 chapters 23 and 25.

19 2. Approval of rates. The superintendent shall
20 apply the procedures and standards of this section in
21 investigating, reviewing and approving or disapprov-
22 ing rates.

23 A. He may require the filing of specific rates
24 for workers' compensation insurance, including
25 classifications of risks, experience or any other
26 rating information from insurance companies au-
27 thorized to transact insurance in this State and
28 the Workers' Compensation Insurance Fund.

29 B. He may make or cause to be made investiga-
30 tions as he may deem necessary to satisfy himself
31 that the rates to be promulgated are just and
32 reasonable.

33 C. He may at any time, after public hearing,
34 withdraw his approval of a previously approved
35 rate filing.

36 Sec. 3. 39 MRSA §23, sub-§1-A is enacted to
37 read:

38 1-A. Fund. By insuring and keeping insured the

1 payment of compensation and other benefits under an
2 insurance policy with the Workers' Compensation In-
3 insurance Fund.

4 Sec. 4. 39 MRSA c. 7 is enacted to read:

5 CHAPTER 7

6 WORKERS' COMPENSATION INSURANCE FUND

7 §251. Workers' Compensation Insurance Fund

8 There is established the "Workers' Compensation
9 Insurance Fund," to be administered by the Workers'
10 Compensation Insurance Fund Board, for the purpose of
11 insuring employers against liability for injuries
12 compensable under this chapter and for the purpose of
13 insuring to employees and other persons the compensa-
14 tion and benefits provided by this Act for employees
15 and their dependents. Nothing in this Act prohibits
16 an employer from becoming or remaining a self-insurer
17 pursuant to section 23. In this chapter, the Work-
18 ers' Compensation Insurance Fund shall be called the
19 "fund" and the Workers' Compensation Insurance Fund
20 Board shall be called the "board."

21 §252. Contents

22 The Workers' Compensation Insurance Fund shall
23 consist of:

24 1. Premiums. All premiums received and paid in-
25 to the fund for insurance issued by it;

26 2. Property. All property and securities ac-
27 quired by and through the use of money belonging to
28 the fund and acquired by gift or otherwise; and

29 3. Interest. All interest earned on money be-
30 longing to the fund and deposited or invested as pro-
31 vided in this Act.

32 §253. Rates

33 For the purpose only of establishing premium
34 rates, the fund shall be considered to be subject to
35 Title 24-A, chapter 25.

1 §254. Liability

2 The fund may insure employers against their lia-
3 bility for compensation or damages under this chapter
4 and against liability for compensation or damages un-
5 der the United States Longshoremen's and Harbor Work-
6 ers' Compensation Act or any extension of that Act.

7 §255. Self-supporting

8 The fund shall, after a reasonable time in which
9 to establish itself, become neither more nor less
10 than self-supporting. For that purpose, loss experi-
11 ence and expense shall be ascertained and dividends
12 or credits may be made as provided in this chapter.
13 The fund is exempt from any financial or budgetary
14 control or supervision by any state agency, except
15 for the audit made by the Superintendent of Insur-
16 ance.

17 §256. Dividends

18 The actual loss experience and expense of the
19 fund shall be ascertained on or before July 1st in
20 each year for the calendar year preceding. If it is
21 then shown that there exists an excess of assets over
22 liabilities, necessary reserves and a reasonable sur-
23 plus for the catastrophe hazard, then a cash dividend
24 may be declared to, or credit allowed on, the renewal
25 premium of each employer who has been insured with
26 the fund. The cash dividend or credit is to be in an
27 amount equivalent to the individual employer's pro-
28 portion of divisible surplus.

29 §257. Application of assets

30 The assets of the fund are applicable to the pay-
31 ment of losses sustained on account of insurance and
32 to the payment of the salaries and all other adminis-
33 trative expenses charged against it.

34 §258. Real estate

35 The fund may acquire, own, sell and repurchase
36 real property for its offices when so determined by
37 the board.

1 §259. Custodian

2 The Treasurer of State shall be the custodian of
3 all money and securities belonging to the fund, ex-
4 cept as provided in this chapter. He is liable on his
5 official bond for their safekeeping.

6 §260. Deposits

7 All money which belongs to the fund and is col-
8 lected or received under this chapter shall be deliv-
9 ered to the Treasurer of State or deposited to his
10 credit in such bank or banks throughout the State as
11 he designates, but this money is not state money.
12 All money of the fund shall be held in a separate ac-
13 count.

14 §261. Securities

15 All securities belonging to the fund shall be de-
16 livered to the Treasurer of State and held by him un-
17 til otherwise disposed of as provided by this chap-
18 ter.

19 §262. Expenditures

20 Upon delivery or deposit, money and securities
21 shall be credited by the Treasurer of State to the
22 fund. No money received or collected on account of
23 the fund may be expended or paid out without first
24 passing into the State Treasury and being drawn as
25 provided in this chapter.

26 §263. Ledger account

27 The Treasurer of State shall keep a special ledg-
28 er account showing all of the assets pertaining to
29 the fund. In the Treasurer of State's general ledger,
30 this account may appear as a cash account, like other
31 accounts of funds in the State Treasury, and only the
32 actual cash coming into the fund shall be entered in
33 the account.

34 §264. Revolving fund

35 The board may withdraw from the fund in the State
36 Treasury, without at the time presenting vouchers and

1 itemized statements, a sum not to exceed in the ag-
2 gregate \$100,000 to be used as a revolving fund. The
3 revolving fund shall be deposited in such banks and
4 under such conditions as the board shall decide.

5 §265. Expenditures.

6 Expenditures made from the revolving fund in pay-
7 ments made in connection with the insurance business
8 transacted by the fund are exempted from the restric-
9 tions imposed upon the expenditures of state money.
10 Reimbursement of the revolving fund shall be made
11 upon presentation to the Treasurer of State of an ab-
12 stract or statement of these expenditures. The ab-
13 stract shall be in the form required by the Treasurer
14 of State.

15 §266. Investments

16 The board shall cause all money in the fund which
17 is in excess of current requirements to be invested
18 and reinvested, from time to time, in securities au-
19 thorized by law for the investment of funds of sav-
20 ings banks.

21 §267. Deposits

22 All money in the fund, in excess of current re-
23 quirements and not otherwise invested, may be depos-
24 ited by the Treasurer of State, from time to time, in
25 banks authorized by law to receive deposits of public
26 money, under the same rules that govern the deposit
27 of public funds. The interest accruing on the money
28 shall be credited to the fund.

29 §268. Valuation

30 During the months of January and July of each
31 year, the board shall cause a valuation to be made of
32 the properties and securities acquired and held for
33 the fund and shall report the results of the valua-
34 tion to the Governor and the Superintendent of Insur-
35 ance.

36 §269. Acts

37 All business and affairs of the fund, including

1 any litigation, shall be conducted in the name of the
2 fund, and in that name, without any other name or ti-
3 tle. The board or the executive director of the fund
4 may perform the acts authorized by this chapter.

5 §270. Reimbursements

6 The fund shall annually reimburse the State Trea-
7 sury for services performed as custodian of the money
8 of the fund.

9 §271. Workers' Compensation Insurance Fund Board

10 The Workers' Compensation Insurance Fund Board,
11 as established in Title 5, section 12004, subsection
12 7, shall be composed of 5 members appointed by the
13 Governor and shall be subject to review by the joint
14 standing committee of the Legislature having juris-
15 isdiction over business and insurance and to confirma-
16 tion by the Legislature. Two of the members shall be
17 policyholders or representatives of policyholders and
18 2 shall be employees of a policyholder in the fund.
19 With exception of appointments in the first instance,
20 at least 4 of the members, in order to qualify for
21 membership on the board, shall have been policyhold-
22 ers or the employees of a policyholder in the fund
23 for one year prior to appointment and shall continue
24 in that status during the period of membership. The
25 members shall be appointed for terms of 5 years each,
26 except that of the members first appointed, one shall
27 be appointed for a term of one year; one for a term
28 of 2 years; one for a term of 3 years; one for a term
29 of 4 years; and one for a term of 5 years. They shall
30 serve until their successors are appointed and have
31 qualified. Vacancies shall be filled for the unex-
32 pired terms.

33 §272. Chairman

34 The Governor shall appoint annually in January
35 from the board members a chairman and a vice-chairman
36 who shall act as chairman in the absence of the
37 chairman.

38 §273. Powers

39 The board is vested with full power, authority

1 and jurisdiction over the fund. The board may perform
2 all acts necessary or convenient in the exercise of
3 any power, authority or jurisdiction over the fund,
4 either in the administration or in connection with
5 the insurance policies to be carried on by it under
6 this chapter, subject to such regulation as provided.

7 §274. Rules

8 The board may adopt rules pursuant to the Maine
9 Administrative Procedure Act, Title 5, chapter 375,
10 relating to the conduct of the business of the fund.

11 §275. Meetings; quorum

12 The board shall meet at least once in each month
13 and at such other times as it may determine or the
14 business of the fund may require. Three or more mem-
15 bers present and voting at a meeting in the conduct
16 of the affairs of the board shall constitute a quo-
17 rum. The action of 3 or more members present is con-
18 sidered an action of the board.

19 §276. Compensation

20 The members of the board are entitled to receive
21 compensation as set out in Title 5, chapter 379.

22 §277. Audit

23 The board shall have an annual audit of the books
24 and records of the fund made by a duly qualified cer-
25 tified public accountant and shall cause an abstract
26 summary of this audit to be published.

27 §278. Powers of board

28 The board may:

29 1. Sue. Sue and be sued in all actions arising
30 out of any act or omission in connection with its
31 business or affairs. Service of process in suits af-
32 fecting the fund shall be made upon the executive di-
33 rector of the fund and he shall be responsible for
34 initiating all litigation necessary in the affairs of
35 the fund. The board shall provide for its own legal
36 services, by contract or otherwise, in respect to the

1 litigation;

2 2. Contract. Enter into any contracts or obli-
3 gation relating to the fund which are authorized or
4 permitted by law;

5 3. Invest. Invest and reinvest the money be-
6 longing to the fund as provided by this chapter; and

7 4. Other business. Conduct all business and af-
8 airs and perform all acts relating to the fund
9 whether or not specifically designated in this chap-
10 ter.

11 §279. Reports of Superintendent of Insurance

12 The statistical and actuarial data compiled by
13 the fund shall at all times be available to the Su-
14 perintendent of Insurance for his use in judging the
15 adequacy or inadequacy of rates and schedules filed.
16 The executive director of the fund shall make reports
17 to the Superintendent of Insurance required by law to
18 be made to him.

19 §280. Executive director

20 The board shall appoint an executive director of
21 the fund and fix his salary. The executive director
22 shall manage and conduct the business and affairs of
23 the fund under the general direction and subject to
24 the approval of the board and shall perform such du-
25 ties as the board shall prescribe.

26 §281. Bond

27 The executive director, before entering on the
28 duties of his office, shall qualify by giving an of-
29 ficial bond approved by and paid for by the board, in
30 such sum as the board may order and by taking and
31 subscribing to an official oath. The approval of the
32 board shall be by written endorsement on the bond.
33 The bond shall be filed in the office of the Secre-
34 tary of State.

35 §282. Duties

36 The board may delegate to the executive director

1 of the fund, under such rules and subject to such
2 conditions as it may from time to time prescribe, any
3 power, function or duty conferred by law on the board
4 in connection with the fund or in connection with the
5 administration, management and conduct of business
6 and affairs of the fund. The executive director may
7 exercise such powers and functions and perform such
8 duties with the same force and effect as the board,
9 but subject to its approval.

10 §283. Employees

11 Subject to approval of the board, the executive
12 director shall appoint all employees, subject to the
13 state personnel law.

14 §284. Additional powers

15 In conducting the business and affairs of the
16 fund, the executive director may:

17 1. Contract. Enter into contracts of workers'
18 compensation insurance and other liability insurance
19 authorized under this Act, provided that no policies
20 of insurance may be issued until the fund has been
21 certified by the Chairman of the Workers' Compensa-
22 tion Commission, the Superintendent of Insurance and
23 the Commissioner of Labor as being, in their view, of
24 sufficient assets to conduct the affairs of the fund;

25 2. Annuities. Sell annuities covering compensa-
26 tion benefits;

27 3. Decline to insure. Decline to insure any
28 risk in which the minimum requirement of safety fixed
29 by law or rule of the State with regard to a safe
30 place of employment are not complied with, or which
31 is beyond the safe carrying of the fund. Otherwise,
32 he may not refuse to insure any workers' compensation
33 risk under state law, tendered with premium for the
34 insurance;

35 4. Reinsure. Reinsure any risk or any part of a
36 risk;

37 5. Insure. Insure against any loss deemed ad-
38 visable;

1 6. Inspect. Cause to be inspected and audited
2 the payrolls of employers applying to the fund for
3 insurance;

4 7. Treatment. Contract with physicians, sur-
5 geons, hospitals and rehabilitation facilities for
6 medical, surgical and rehabilitation treatment and
7 the care and nursing of injured persons entitled to
8 benefits under this Act; and

9 8. Act for fund. Act for the fund in the col-
10 lection and disbursements of all money necessary for
11 administration of the fund and the conduct of the
12 business of the fund.

13 Each quarter the executive director of the fund
14 shall make a report to the Governor of the business
15 done by the fund during the previous quarter and a
16 statement of the fund's resources and liabilities at
17 the close of that previous quarter.

18 §285. Declaration of public purpose

19 It is declared that the establishment of the fund
20 is a public purpose and use for which public money
21 may be spent and private property acquired and that
22 the establishment is a function of state concern.

23 §286. Power to issue revenue bonds

24 The Workers' Compensation Insurance Fund Board
25 may issue revenue bonds and notes and refunding bonds
26 and notes for the purpose of organizing, establishing
27 an initial fund and continuing operations and exer-
28 cising all powers of the board.

29 §287. Credit of State not pledged

30 The bonds do not create a pledge of the faith or
31 credit of the State, but are totally dependent for
32 repayment upon receipt of premium dollars from em-
33 ployers.

34 §288. Bondholder's rights against fund

35 The board shall cause to be written one or more
36 bond resolutions for the issuance of the revenue

1 bonds authorized, which resolution shall clearly de-
2 fine those assets of the fund upon which bondholders
3 have first claim. In any case in which payments to
4 claimants under the fund conflict with repayment of
5 bondholder, the statement of priority found in the
6 resolution controls. In any case, the board shall in-
7 sure that the fund, as supported by employer premiums
8 and as reinsured, is sufficient at all times to repay
9 bondholders in accordance with the provisions of the
10 bonds.

11 §289. Tax exemption

12 Bonds issued under this chapter, being for essen-
13 tial and governmental purpose, are exempt from taxa-
14 tion.

15 §290. No personal liability

16 No person connected with issuance of these bonds
17 is personally liable on the bonds by reason of the
18 issuance of the bonds.

19 §291. Negotiability of bonds

20 Whether or not the bonds are of such form and
21 character as to be negotiable instruments under the
22 Uniform Commercial Code, Title 11, Article 8, the
23 bonds are made negotiable instruments within the
24 meaning of and for all the purposes of the Uniform
25 Commercial Code, Title 11, Article 8, subject only to
26 the provisions of the bonds for registration.

27 §292. Payment of claims

28 In the case of employers securing insurance from
29 the fund, the fund shall pay promptly all compensa-
30 tion awarded or approved pursuant to this Act, pro-
31 vided that in the case of any settlement agreement or
32 lump sum payment, the separate agreement of the em-
33 ployer and of the fund is first secured and the fund
34 may in no manner condition its coverage on the agree-
35 ment by the employer.

36 STATEMENT OF FACT

1 This bill provides for workers' compensation in-
2 surance through a state fund, thereby reducing the
3 cost of state employers providing workers' compensa-
4 tion coverage by approximately 30%. The percentage of
5 workers' compensation premiums paid by state employ-
6 ers and returned to state workers in the form of ben-
7 efits has traditionally been in the range of 60%,
8 whereas, in 12 states which provide for workers' com-
9 pensation coverage through a state fund, the percent-
10 age of premiums returned as benefits to injured work-
11 ers is approximately 90%. An additional advantage of
12 this state fund would be in the retention of both
13 control and investment decisions on this fund in the
14 State's hands, rather than sources outside the State.

15 This bill provides a competitive state fund. That
16 is, a state fund which would compete with private in-
17 surance, giving state employers a choice to place
18 their workers' compensation coverage with either pri-
19 vate insurance carriers or through a state fund. Pre-
20 sumably, state employers would place their coverage
21 in the most cost-efficient fashion. An added advan-
22 tage to state employers who choose to remain with
23 private insurance coverage would be that the private
24 insurance coverage would be competing with the state
25 fund, and the desire of private insurance companies
26 to increase their rates on workers' compensation
27 would be diminished.

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