

# MAINE STATE LEGISLATURE

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(New Draft of S.P. 63, L.D. 130)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1270

S.P. 412

In Senate, April 14, 1987

Reported by Senator Theriault of Aroostook for the Committee on Banking and Insurance and printed under Joint Rule 2. Original Bill sponsored by Senator Bustin of Kennebec. Cosponsored by: Senator Collins of Aroostook, Representative Simpson of Casco, Representative O'Gara of Westbrook.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

1                    **AN ACT to Amend the Requirements for**  
2                    **Individual Public Self-insurers under**  
3                    **the Workers' Compensation Act.**  
4

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

7                    Sec. 1. 39 MRSA §23, sub-§2, as amended by PL  
8                    1985, c. 779, §85, is further amended to read:

9                    2. Proof of solvency and financial ability to  
10                    pay; trust. By furnishing satisfactory proof to the  
11                    Superintendent of Insurance of his solvency and fi-  
12                    nancial ability to pay the compensation and benefits,  
13                    and deposit cash, satisfactory securities or a secu-  
14                    rity bond, with the Workers' Compensation Commission,  
15                    in such sum as the superintendent may determine pur-

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

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

35 A. Has positive net earnings; or

36 B. Can demonstrate a level of working capital  
37 adequate to its operating needs.

38 Notwithstanding any provision of this section or  
39 chapter, any bond or security deposit required of a  
40 public employer which is a self-insurer shall not ex-  
41 ceed \$50,000, provided that such public employer has  
42 ~~a net worth equal to or in excess of \$25,000,000--and~~  
43 a state-assessed valuation equal to or in excess of

1     \$300,000,000 and either a bond rating equal to or in  
2     excess of the 2nd highest standard as set by a na-  
3     tional bond rating agency or a net worth equal to or  
4     in excess of \$25,000,000. If a county, city or town  
5     relies upon a bond rating, it shall value or cause to  
6     be valued its unpaid workers' compensation claims  
7     pursuant to sound accepted actuarial principles.  
8     This value shall be incorporated in the annual audit  
9     of the county, city or town together with disclosure  
10    of funds appropriated to discharge incurred claims  
11    expenses. "Public employer" includes the State, the  
12    University of Maine System, counties, cities and  
13    towns.

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

26           Sec. 2. 39 MRSA §23, sub-§2-A, as amended by PL  
27    1983, c. 668, §2, is further amended to read:

28           2-A. Group self-insurers; application. Except  
29    for the provision relating to individual public em-  
30    ployer self-insurers, subsection 2 shall be equally  
31    applicable in all respects to group self-insurers.  
32    Any employer or group of employers desiring to become  
33    a self-insurer shall submit to the Superintendent of  
34    Insurance with an application for self-insurance, in  
35    a form prescribed by the superintendent the follow-  
36    ing:

37           A. A payroll report for each participating em-  
38    ployer of the group for 3 preceding annual fiscal  
39    periods;

40           B. A report of compensation losses incurred,  
41    payments plus reserves, by each participating em-  
42    ployer of the group for the corresponding 3 annu-  
43    al periods;

1 C. A sworn itemized statement of the group's as-  
2 sets and liabilities; satisfactory proof of fi-  
3 nancial ability to pay compensation for the em-  
4 ployers participating in the group plan; the  
5 group's reserves, their source and assurance of  
6 continuance;

7 D. A description of the safety organization  
8 maintained by the employer or group for the pre-  
9 vention of injuries;

10 E. A statement showing the kind of operations  
11 performed or to be performed; and

12 F. Any and all agreements, contracts or other  
13 pertinent documents relating to the organization  
14 of the employers in the group.

15 If, upon examination of the sworn financial statement  
16 and other data submitted, the superintendent is sat-  
17 isfied as to the ability of the employer or group to  
18 make current compensation payments and that the em-  
19 ployer's or group's tangible assets make reasonably  
20 certain the payment of all obligations that may arise  
21 under the Workers' Compensation Law Act, the applica-  
22 tion shall be granted subject to the terms and condi-  
23 tions setting out the exposure of cash deposits or  
24 securities or an acceptable surety bond, all as re-  
25 quired by the superintendent. Security against shock  
26 or catastrophe loss shall be provided either by de-  
27 positing securities with the Workers' Compensation  
28 Commission in such amount as the superintendent may  
29 determine, or by filing with the superintendent and  
30 the Workers' Compensation Commission an insurance  
31 carrier's certificate of a standard self-insurer's  
32 primary excess contract issued to the self-insurer or  
33 group in form approved by the superintendent, provid-  
34 ing coverage against losses arising out of one injury  
35 in such amounts as the superintendent may determine,  
36 or a combination of the foregoing, satisfactory to  
37 the superintendent. Notwithstanding any provision of  
38 this section or chapter, no specific or aggregate ex-  
39 cess insurance shall may be required of any individu-  
40 al public employer who is self-insured and has a net  
41 ~~worth equal to or in excess of \$25,000,000~~ and a  
42 state-assessed valuation equal to or in excess of  
43 \$300,000,000 and either a net worth equal to or in

1 excess of \$25,000,000 or has a bond rating equal to  
2 or in excess of the 2nd highest standard as set by a  
3 national bond rating organization, provided that if  
4 the self-insurer relying on a bond rating is a coun-  
5 ty, city or town it shall value or cause to be valued  
6 its unpaid workers' compensation claims pursuant to  
7 sound accepted actuarial principles. This value  
8 shall be incorporated in the annual audit of the  
9 county, city or town together with disclosure of  
10 funds appropriated to discharge incurred claims ex-  
11 penditures.

12 Yearly reports in a form prescribed by the superin-  
13 tendent shall be filed by each self-insurer or group.  
14 The superintendent may, in addition, require the fil-  
15 ing of quarterly financial status reports whenever he  
16 has reason to believe that there has been a deterio-  
17 ration in the financial condition of either an indi-  
18 vidual or group self-insurer which adversely affects  
19 the individual's or group's ability to pay expected  
20 losses. Said The reports shall be filed within 30  
21 days after the superintendent's request, or at such  
22 time as the superintendent shall otherwise set.

23 After approving any application for self-insurance,  
24 the superintendent shall promptly notify the Workers'  
25 Compensation Commission and forward to it copies of  
26 the application and all supporting materials.

27 Sec. 3. 39 MRSA §23-A, sub-§2, as amended by PL  
28 1981, c. 637, §3, is further amended to read:

29 2. Created; legal entity. There is created a ~~new~~  
30 profit nonprofit unincorporated legal entity to be  
31 known as the Maine Self-Insurance Guarantee Associa-  
32 tion. All self-insurers, as defined in this Title,  
33 shall be and remain members of the association as a  
34 condition of authority to self-insurer in this State,  
35 except that all of public employers which are indi-  
36 vidual self-insurers, with a net worth equal to or in  
37 excess of \$25,000,000 and in the case of counties,  
38 cities and towns, a state-assessed valuation equal to  
39 or in excess of \$300,000,000 and either has net worth  
40 equal to or in excess of \$25,000,000 or has a bond  
41 rating equal to or in excess of the 2nd highest stan-  
42 dard as set by a national bond rating organization

1 shall not be subject to this subsection. However, if  
2 a self-insurer relying on a bond rating is a county,  
3 city or town, it shall value or cause to be valued  
4 its unpaid workers' compensation claims pursuant to  
5 sound accepted actuarial principles. This value  
6 shall be incorporated in the annual audit of the  
7 county, city or town together with disclosure of  
8 funds appropriated to discharge incurred claims ex-  
9 penses. The association shall perform its functions  
10 under a plan of operation established or amended, or  
11 both, and approved by the superintendent and shall  
12 exercise its powers through the board of directors  
13 established in this section.

14 A. A self-insurer shall be deemed to be a member  
15 of the association for purposes of another  
16 self-insurer's insolvency, as defined in subsec-  
17 tion 6, when:

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

20 (2) The self-insurer has been a member of  
21 the association at some point in time during  
22 the 12-month period immediately preceeding  
23 the insolvency in question.

24 B. A self-insurer shall be deemed to be a member  
25 of the association for purposes of its own insol-  
26 vency when:

27 (1) The self-insurer is a member of the as-  
28 sociation when the insolvency occurs, but  
29 claims relating to a compensable event which  
30 occurred prior to the date the self-insurer  
31 joined the association are not included  
32 hereunder; or

33 (2) The self-insurer becomes insolvent af-  
34 ter leaving the association, but claims re-  
35 lating to a compensable event which occurred  
36 prior to the date the self-insurer joined  
37 the association are not included hereunder,  
38 and claims relating to a compensable event  
39 which occurred after the self-insurer ceased  
40 to be an approved self-insurer are not to be  
41 afforded coverage hereunder.

1 C. In determining the membership of the associa-  
2 tion pursuant to paragraphs A and B for any date  
3 after January 1, 1983, no employer claiming self-  
4 insurer status may be deemed to be a member of  
5 the association on any date after January 1,  
6 1983, unless that employer is at that time regis-  
7 tered as a self-insurer by the superintendent  
8 pursuant to section 23, subsection 11.

9

STATEMENT OF FACT

10 This new draft keeps the substance of the bill,  
11 but adds the requirement of disclosure in the annual  
12 audit for a county, city or town of funds that have  
13 been appropriated to pay workers' compensation  
14 claims.

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