

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1320

H.P. 952

House of Representatives, April 24, 1989

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Representative MCHENRY of Madawaska, Representative RYDELL of Brunswick and Senator DUTREMBLE of York.

STATE OF MAINE

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

**An Act to Create a State Fund to Provide Workers' Compensation
Insurance Coverage to Employers.**



1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 5 MRSA §12004-F, sub-§14** is enacted to read:

5 14. Workers' Compensa- \$30/Day 39 MRSA §271
7 tion Insurance Fund Board and Expenses

9 **Sec. 2. 24-A MRSA §2363, sub-§1**, as enacted by PL 1987, c.
559, Pt. A, §4, is amended to read:

11 1. **Policies.** Every insurance company issuing workers'
13 compensation insurance policies covering the payment of
15 compensation and benefits provided for in this subchapter and the
Workers' Compensation Insurance Fund shall use only policy forms
approved pursuant to section 2412.

17 **Sec. 3. 24-A MRSA §2363, sub-§2, ¶A**, as enacted by PL 1987, c.
19 559, Pt. A, §4, is amended to read:

21 A. Require the filing of specific rates for workers'
23 compensation insurance, including classification of risks,
25 experience or any other rating information from insurance
companies authorized to transact insurance in this State and
the Workers' Compensation Insurance Fund;

27 **Sec. 4. 39 MRSA §23, sub-§1-A** is enacted to read:

29 1-A. Fund. By insuring and keeping insured the payment of
compensation and other benefits under an insurance policy with
the Workers' Compensation Insurance Fund.

31 **Sec. 5. 39 MRSA c.7** is enacted to read:

33 CHAPTER 7

35 WORKERS' COMPENSATION INSURANCE FUND

37 §251. Workers' Compensation Insurance Fund

39 There is established the "Workers' Compensation Insurance
41 Fund," to be administered by the Workers' Compensation Insurance
Fund Board, for the purpose of insuring employers against
43 liability for injuries compensable under this chapter and for the
purpose of insuring to employees and other persons the
45 compensation and benefits provided by this chapter for employees
and their dependents. Nothing in this chapter prohibits an
47 employer from becoming or remaining a self-insurer pursuant to
section 23. In this chapter, the Workers' Compensation Insurance
49 Fund shall be called the "fund" and the Workers' Compensation
Insurance Fund Board shall be called the "board."

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§252. Contents

5 The Workers' Compensation Insurance Fund shall consist of:

7 1. Premiums. All premiums received and paid into the fund for insurance issued by the fund;

9 2. Property. All property and securities acquired by and through the use of money belonging to the fund and acquired by gift or otherwise; and

11 3. Interest. All interest earned on money belonging to the fund and deposited or invested as provided in this chapter.

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§253. Rates

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

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§254. Liability

23 The fund may insure employers against their liability for compensation or damages under this chapter and against liability for compensation or damages under the United States Longshoremen's and Harbor Workers' Compensation Act, 1927 Public Law, No. 803, 44 Stat 1424, as amended.

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§255. Self-supporting

31 Within a reasonable time after establishment, the fund shall become self-supporting. For that purpose, loss experience and expense shall be ascertained and dividends or credits may be made as provided in this chapter. The fund is exempt from any financial or budgetary control or supervision by any state agency, except for the audit made by the Superintendent of Insurance.

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§256. Dividends

41 The actual loss experience and expense of the fund shall be ascertained on or before July 1st in each year for the calendar year preceding. If it is then shown that there exists an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared to, or credit allowed on, the renewal premium of each employer who has been insured with the fund. The cash dividend or credit is to be in an amount equivalent to the individual employer's proportion of divisible surplus.

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§257. Application of assets

53 The assets of the fund are applicable to the payment of losses sustained on account of insurance and to the payment of

1 the salaries and all other administrative expenses charged
2 against the fund.

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4 **§258. Real estate**

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6 The board may acquire, own, sell and repurchase real
7 property for administrative offices.

8

9 **§259. Custodian**

10 The Treasurer of State shall be the custodian of all money
11 and securities belonging to the fund, except as provided in this
12 chapter. The Treasurer of State is liable on official bond for
13 their safekeeping.

14

15 **§260. Deposits**

16

17 All money which belongs to the fund and is collected or
18 received under this chapter shall be delivered to the Treasurer
19 of State or deposited to the Treasurer of State's credit in the
20 bank or banks throughout the State as the Treasurer of State
21 designates, but this money is not state money. All money of the
22 fund shall be held in a separate account.

23

24 **§261. Securities**

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26 All securities belonging to the fund shall be delivered to
27 the Treasurer of State and held by the Treasurer of State until
28 otherwise disposed of as provided by this chapter.

29

30 **§262. Expenditures**

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32 Upon delivery or deposit, money and securities shall be
33 credited by the Treasurer of State to the fund. No money
34 received or collected on account of the fund may be expended or
35 paid out without first passing into the State Treasury and being
36 drawn as provided in this chapter.

37

38 **§263. Ledger account**

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40 The Treasurer of State shall keep a special ledger account
41 showing all of the assets pertaining to the fund. In the
42 Treasurer of State's general ledger, this account may appear as a
43 cash account, as other accounts of funds appear in the State
44 Treasury, and only the actual cash deposited to the fund shall be
45 entered in the account.

46

47 **§264. Revolving fund**

48

49 The board may withdraw from the fund in the State Treasury,
50 without at the time presenting vouchers and itemized statements,
51 a sum not to exceed in the aggregate \$100,000 to be used as a

1 revolving fund. The revolving fund shall be deposited in such
2 banks and under such conditions as the board shall decide.

3
4 **§265. Expenditures**

5
6 Expenditures made from the revolving fund in payments made
7 in connection with the insurance business transacted by the fund
8 are exempt from the restrictions imposed on the expenditures of
9 state money. Reimbursement of the revolving fund shall be made
10 upon presentation to the Treasurer of State of an abstract or
11 statement of these expenditures. The abstract shall be in the
12 form required by the Treasurer of State.

13
14 **§266. Investments**

15
16 The board shall cause all money in the fund which is in
17 excess of current requirements to be invested and reinvested,
18 from time to time, in securities authorized by law for the
19 investment of funds of savings banks.

20
21 **§267. Deposits**

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

29
30 **§268. Valuation**

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32 During the months of January and July of each year, the
33 board shall cause a valuation to be made of the properties and
34 securities acquired and held for the fund and shall report the
35 results of the valuation to the Governor and the Superintendent
36 of Insurance.

37
38 **§269. Actions**

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40 All business and affairs of the fund, including any
41 litigation, shall be conducted in the name of the fund, and in
42 that name only, without any other name or title. The board or
43 the executive director of the fund may perform the actions
44 authorized by this chapter.

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46 **§270. Reimbursements**

47
48 The fund shall annually reimburse the State Treasury for
49 services performed as custodian of the money of the fund.

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3 §271. Workers' Compensation Insurance Fund Board

5 The Workers' Compensation Insurance Fund Board, as
7 established in Title 5, section 12004-F, subsection 14, shall be
9 composed of 5 members appointed by the Governor and shall be
11 subject to review by the joint standing committee of the
13 Legislature having jurisdiction over business and insurance
15 matters and confirmation by the Legislature. Two of the members
17 shall be policyholders or representatives of policyholders, 2
19 shall be employees of a policyholder in the fund and one member
21 shall be chosen from the general public. With the exception of
23 appointments in the first instance, at least 4 of the members, in
order to qualify for membership on the board, shall have been
policyholders or the employees of a policyholder in the fund for
one year prior to appointment and shall continue in that status
during the period of membership. The members shall be appointed
for terms of 5 years each, except that, of the members first
appointed, one shall be appointed for a term of one year; one for
a term of 2 years; one for a term of 3 years; one for a term of 4
years; and one for a term of 5 years. The members shall serve
until their successors are appointed and qualified. Vacancies
shall be filled for the unexpired terms.

25 §272. Chair

27 The Governor shall appoint annually in January from the
29 board members a chair and a vice-chair who shall act as chair in
the absence of the chair.

31 §273. Powers

33 The board is vested with full power, authority and
35 jurisdiction over the fund. The board may perform all actions
37 necessary or convenient in the exercise of any power, authority
39 or jurisdiction over the fund, either in the administration or in
connection with the insurance policies to be carried on by the
board under this chapter, subject to the regulations provided.

41 §274. Rules

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

47 §275. Meetings; quorum

49 The board shall meet at least once in each month and at
51 other times as the board may determine or the business of the
53 fund may require. Three or more members present and voting at a
meeting to conduct the business of the board shall constitute a
quorum. The action of 3 or more members present is considered an
action of the board.

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§276. Compensation

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

§277. Audit

The board shall have an annual audit of the books and records of the fund made by a certified public accountant and shall cause a summary of this audit to be published.

§278. Powers of board

The board may:

1. Sue. Sue and be sued in all actions arising out of any act or omission in connection with the board's business or affairs. Service of process in suits affecting the fund shall be made upon the executive director of the fund and the executive director shall be responsible for initiating all litigation necessary concerning the affairs of the fund. The board shall provide for its own legal services, by contract or otherwise, in respect to the litigation;

2. Contract. Enter into any contracts or obligations relating to the fund which are authorized or permitted by law;

3. Invest. Invest and reinvest the money belonging to the fund as provided by this chapter; and

4. Other business. Conduct all business and affairs and perform all activities relating to the fund whether or not specifically designated in this chapter.

§279. Reports of Superintendent of Insurance

The statistical and actuarial data compiled by the fund shall at all times be available to the Superintendent of Insurance for use in judging the adequacy or inadequacy of rates and schedules filed. The executive director of the fund shall make reports to the Superintendent of Insurance as required by law.

§280. Executive director

The board shall appoint an executive director of the fund and fix the executive director's salary. The executive director shall manage and conduct the business and affairs of the fund under the general direction and subject to the approval of the board and shall perform such duties as the board shall prescribe.

1 §281. Bond

3 The executive director, before entering on the duties of
5 office, shall qualify by giving an official bond, approved by and
7 paid for by the board, in such sum as the board may order and by
9 taking and subscribing to an official oath. The approval of the
board shall be by written endorsement on the bond. The bond
shall be filed in the office of the Secretary of State.

11 §282. Duties

13 The board may delegate to the executive director of the
15 fund, under such rules and subject to such conditions as the
17 board may from time to time prescribe, any power, function or
19 duty conferred by law on the board in connection with the fund or
21 in connection with the administration, management and conduct of
business and affairs of the fund. The executive director may
exercise powers and functions and perform duties with the same
force and effect as the board, subject to the board's approval.

23 §283. Employees

25 With the board's approval, the executive director shall
appoint all employees, subject to the state personnel law.

27 §284. Additional powers

29 In conducting the business and affairs of the fund, the
31 executive director may:

33 1. Contract. Enter into contracts of workers' compensation
35 insurance and other liability insurance authorized under this
37 chapter, provided that no policies of insurance are issued until
the fund is determined by the chair of the Workers' Compensation
Commission, the Superintendent of Insurance and the Commissioner
of Labor to be, in their view, of sufficient assets to conduct
the affairs of the fund;

39 2. Annuities. Sell annuities covering compensation
41 benefits;

43 3. Decline to insure. Decline to insure any risk when the
45 place of employment does not comply with the minimum requirement
47 of safety fixed by law or rule of the State or which is beyond
the safe carrying of the fund; otherwise, the executive director
shall not refuse to insure any workers' compensation risk under
state law, tendered with premium for the insurance;

49 4. Reinsure. Reinsure any risk or any part of a risk;

51 5. Insure. Insure against any loss deemed advisable;

53 6. Inspect. Cause the inspection and audit of the payrolls
55 of employers applying to the fund for insurance;

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2 7. Treatment. Contract with physicians, surgeons,
3 hospitals and rehabilitation facilities for medical, surgical and
4 rehabilitation treatment and for the care and nursing of injured
5 persons entitled to benefits under this chapter; and

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7 8. Act for fund. Act for the fund in the collection and
8 disbursement of all money necessary for administration of the
9 fund and the conduct of the business of the fund.

10
11 Each quarter of the fund's fiscal year the executive
12 director shall make a report to the Governor concerning the
13 business done by the fund during the previous quarter and a
14 statement of the fund's resources and liabilities at the close of
15 that previous quarter.

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17 §285. Declaration of public purpose

18
19 It is declared that the establishment of the fund is a
20 public purpose and use for which public money may be spent and
21 private property acquired and that the establishment is a
22 function of state concern.

23
24 §286. Power to issue revenue bonds

25
26 The board may issue revenue bonds and notes and refunding
27 bonds and notes for the purpose of organizing and establishing an
28 initial fund and continuing operations and exercising all powers
29 of the board.

30
31 §287. Credit of State not pledged

32
33 The bonds do not create a pledge of the faith or credit of
34 the State, but are totally dependent on receipt of premium
35 dollars from employers for repayment.

36
37 §288. Bondholder's rights against fund

38
39 The board shall cause to be written one or more bond
40 resolutions for the issuance of the revenue bonds authorized. The
41 resolution shall clearly define those assets of the fund on which
42 bondholders have first claim. In any case in which payments to
43 claimants under the fund conflict with repayment to the
44 bondholder, the statement of priority found in the resolution
45 controls. In any case, the board shall ensure that the fund, as
46 supported by employer premiums and as reinsured, is sufficient at
47 all times to repay bondholders in accordance with the provisions
of the bonds.

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3 §289. Tax exemption

5 Bonds issued under this chapter for essential and
governmental purpose are exempt from taxation.

7 §290. No personal liability

9 No person connected with issuance of these bonds is
11 personally liable for the bonds by reason of the issuance of the
bonds.

13 §291. Negotiability of bonds

15 Whether or not the bonds are of such form and character as
17 to be negotiable instruments under the Uniform Commercial Code,
Title 11, article 8, the bonds are made negotiable instruments
19 within the meaning of and for all the purposes of the Uniform
Commercial Code, Title 11, article 8, subject only to the
21 provisions of the bonds for registration.

23 §292. Payment of claims

25 In the case of employers securing insurance from the fund,
27 the fund shall pay promptly all compensation awarded or approved
pursuant to this chapter provided that, in the case of any
29 settlement agreement or lump sum payment, the separate agreement
of the employer and of the fund is first secured and the fund may
31 in no manner condition its coverage on the agreement by the
employer.

33 STATEMENT OF FACT

35
37 This bill provides for workers' compensation insurance
39 through a state fund, thereby reducing the cost of state
41 employers providing workers' compensation coverage by
43 approximately 30%. The percentage of workers' compensation
45 premiums paid by state employers and returned to state workers in
47 the form of benefits has traditionally been in the range of 60%,
whereas, in 12 states which provide for workers' compensation
coverage through a state fund, the percentage of premiums
returned as benefits to injured workers is approximately 90%. An
additional advantage of this state fund is the retention of both
control and investment decisions on this fund in the State's
hands, rather than sources outside the State.

49 This bill provides a competitive state fund; one which would
51 compete with private insurance, giving state employers a choice
53 of placing their workers' compensation coverage with either
private insurance carriers or a state fund. Presumably, state
55 employers would place their coverage in the most cost-efficient
fashion. In addition, state employers who choose to remain with
private insurance coverage would cause private insurance

1 companies to compete with the state fund, diminishing the desire
of private insurance companies to increase their rates on
3 workers' compensation insurance.