

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 764

H.P. 536

House of Representatives, February 21, 1991

Reference to the Committee on Education suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative MARSANO of Belfast.

Cosponsored by Representative GWADOSKY of Fairfield, Representative RYDELL of Brunswick and Representative GARLAND of Bangor.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Clarify the Responsibilities of School Boards.**

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(EMERGENCY)

2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

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6           Whereas, it is necessary and desirable to control the  
increased costs of health care during this period of fiscal  
crisis; and

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10           Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
12 necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

16                   **20-A MRSA §1001, sub-§5, ¶B-1 is enacted to read:**

18                   B-1. Provide direct reimbursement of the costs and expenses  
20                   incurred by employees and their family members pursuant to a  
22                   direct reimbursement plan for health, hospitalization and  
                    major medical costs and expenses.

24                   (1) Prior to the operation of any direct reimbursement  
26                   plan or program, a school board shall adopt guidelines  
28                   containing a funding mechanism adequate to the  
30                   financial needs of the plan or program and shall  
32                   provide for the fixed costs of operations of the plan  
                    for the first prospective fund year. A reasonable  
                    amount sufficient to satisfy immediate claims costs  
                    must be held in a segregated account to be used solely  
                    for this purpose.

34                   (2) Prior to the operation of any direct reimbursement  
36                   plan or program, a school board shall obtain excess  
38                   insurance or reinsurance. The insurance must limit the  
40                   exposure of the school board to a defined level both as  
42                   to ultimate claims values and the loss ratio at which  
                    recovery from the insurer is realized. The attachment  
                    point of continuing excess coverage must provide risk  
                    relief to the plan or program adequate in view of its  
                    financing needs.

44                   (3) Prior to the operation of any direct reimbursement  
46                   plan or program, the school board or other legal entity  
48                   establishing the plan or program shall obtain an  
50                   independent actuarial advisory opinion report given by  
52                   a member of the American Academy of Actuaries qualified  
                    as a health loss reserve specialist as defined by the  
                    National Association of Insurance Commissioners. Two  
                    copies of this report must be filed with the  
                    Superintendent of Insurance. The report must address:

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(a) The financial viability of the plan or program; and

(b) The ultimate risk exposure attendant to each type of employee benefit provided pursuant to the plan or program.

(4) The school board or other legal entity establishing a plan or program for the purpose of direct reimbursement pursuant to this paragraph, whether or not a body corporate, may with respect to the plan or program sue or be sued; make contracts; hold and dispose of real property; borrow money, contract debts and pledge assets to the name of the plan; and perform other actions incidental to this subparagraph as necessary.

(5) The plan or program may be established as a separate legal or administrative entity.

(6) The plan or program must be in writing and contain a financial plan setting forth in general terms:

(a) The precise nature of the employee benefit offered pursuant to the plan together with applicable deductible levels, if any, and the maximum level of claims that the plan self-insures;

(b) The amount of cash reserves to be set aside for the payment of claims; and

(c) The amount of insurance to be purchased by the plan to provide coverage above the claims that are not satisfied directly from the plan's resources and the terms of the policy referred to in subparagraph (2).

(7) The legal entity that establishes a plan or program that provides coverage for more than one school administrative unit with respect to the benefits authorized in this paragraph shall adopt a plan of management that, at a minimum, provides the following:

(a) The means of establishing and maintaining a governing authority of the program, including the selection of a governing authority of a board of directors or trustees for the plan, a majority of whom must be from the participating school administrative unit or units;

2                   (b) The responsibility of the governing authority  
4                   to fix contributions to the plan, maintain  
6                   reserves, levy and collect assessments for  
                    deficiencies, dispose of surplus and administer  
                    the plan in the event of its termination,  
                    liquidation or insolvency;

8                   (c) The identification of funds and reserves by  
10                   the type of benefit provided and exposure area;

12                   (d) The basis upon which new members may be  
14                   admitted to and existing members may leave the  
                    plan;

16                   (e) The requirement that any member of a group  
18                   plan or pool established for more than one school  
20                   administrative unit prepay to the plan  
                    administrator an initial deposit equal to 25% of  
                    the annual contribution before coverage is  
                    effective;

22                   (f) Other provisions as necessary or desirable  
24                   for the operation of the plan; and

26                   (g) A provision that, if the assets set aside in  
28                   any group plan for more than one school  
30                   administrative unit are at any time determined to  
32                   be insufficient to enable the plan to discharge  
34                   its legal liabilities and other obligations and  
36                   maintain sound reserves for the provision of the  
38                   employee benefits provided by the plan, the  
40                   governing authority shall within 90 days satisfy  
                    the deficiency or levy a prorated assessment upon  
                    the participating school administrative unit or  
                    units for the amount needed to satisfy the  
                    deficiency. The agreement among school  
                    administrative units in the group plan must  
                    provide sanctions for failure to comply with a  
                    mandatory assessment under this subparagraph.

42                   (8) Prior to the operation of any group or pool plan  
44                   for more than one school administrative unit, the  
46                   governing authority shall adopt underwriting guidelines  
48                   that embody rate charges to prospective members at a  
50                   level adequate to its financial needs and shall provide  
52                   for the fixed costs of operations for the first  
                    prospective fund year. An amount sufficient to  
                    reasonably meet immediate claims costs must be held in  
                    a segregated account to be used solely for this  
                    purpose. Funds determined necessary to fund the  
                    program on an ongoing basis must also be held in a  
                    segregated account.

2                   (9) Each group plan or pool established for more than  
4                   one school administrative unit must file with its  
6                   members, by the last day of the 6th month following the  
8                   end of the fiscal year, an audited financial statement  
                  certified by an independent certified public  
                  accountant. The financial statement must include, but  
                  is not limited to, information concerning:

- 10                   (a) Appropriate reserves for known claims and  
                  expenses associated with those claims;
- 12                   (b) Claims incurred but not reported and expenses  
14                   associated with those claims;
- 16                   (c) Unearned contributions; and
- 18                   (d) Reserves for bad debts.

20                   The audited financial statement must include  
22                   information concerning the adequacy of the plan. This  
24                   statement results from a charge by the directors to the  
26                   plan's actuary and auditor and must address excess  
                  insurance, charges for coverage to members, service  
                  agents' costs and costs of administration of the  
                  program.

28                   Two additional copies of the audited financial  
30                   statement must be filed with the Superintendent of  
                  Insurance.

32                   If a group plan or pool established for more than one  
34                   school administrative unit fails to provide for the  
36                   audited financial statement required, the  
38                   Superintendent of Insurance must perform or cause to be  
                  performed the audit. The group plan or pool must  
                  reimburse the Superintendent of Insurance for the cost  
                  of the audit.

40                   (10) Any reimbursement plan or program for the  
42                   provision of the employee benefits established and  
44                   operated pursuant to this paragraph is not an insurance  
46                   company, reciprocal insurer or insurer under the laws  
                  of this State and the development, administration and  
                  provision of such plan or program does not constitute  
                  an insurance business;

48                   **Emergency clause.** In view of the emergency cited in the  
50                   preamble, this Act takes effect when approved.

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## STATEMENT OF FACT

2 This bill authorizes school boards, in their discretion, to  
4 provide group health, hospitalization and major medical benefits  
6 to their employees through direct reimbursement plans or programs  
8 by self-insuring such benefits. The bill provides guidelines for  
10 the establishment and operation of individual and group  
12 programs. School boards establishing programs would be required  
14 to set aside sufficient amounts to pay immediate claims before  
16 commencing operation of the programs. School boards also would  
18 be required to obtain excess insurance or reinsurance, that is,  
so-called "stop-loss coverage," to limit their exposure under  
such programs and to adopt guidelines establishing funding  
mechanisms for the programs before commencing operation of the  
programs. The legal entity establishing a program to serve a  
group of school administrative units would be required to adopt a  
plan of management providing for the financial operation of the  
program.