

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 876

H.P. 616

House of Representatives, February 27, 1991

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

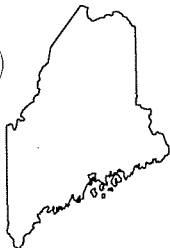
Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Senator CONLEY of Cumberland, Representative MCHENRY of Madawaska and Representative MITCHELL of Vassalboro.

STATE OF MAINE

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

An Act to Establish a Competitive Workers' Compensation Fund.



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

2
4 Sec. 1. 5 MRSA §12004-F, sub-§16 is enacted to read:

6 16. Workers' Compensation Insurance Fund Board \$30/Day 39 MRSA §271
and Expenses

8 Sec. 2. 24-A MRSA §2363, sub-§1, as enacted by PL 1987, c.
10 559, Pt. A, §4, is amended to read:

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

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

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

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

28 1-A. Fund. By insuring and keeping insured the payment of
30 compensation and other benefits under an insurance policy with
the Workers' Compensation Insurance Fund.

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

34 CHAPTER 7

36 WORKERS' COMPENSATION INSURANCE FUND

38 §251. Workers' Compensation Insurance Fund

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

2 **§252. Contents**

4 The Workers' Compensation Insurance Fund consists of:

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

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

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

14 **§253. Rates**

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

20 **§254. Liability**

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

28 **§255. Self-supporting**

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

36 **§256. Dividends**

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

48 **§257. Application of assets**

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

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

4 **§258. Real estate**

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

8 **§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 **§260. Deposits**

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

22 **§261. Securities**

24 All securities belonging to the fund must be delivered to
25 the Treasurer of State and held by the Treasurer of State until
26 otherwise disposed of as provided by this chapter.

27 **§262. Expenditures**

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

33 **§263. Ledger account**

34 The Treasurer of State shall keep a special ledger account
35 showing all of the assets pertaining to the fund. In the
36 Treasurer of State's general ledger, this account may appear as a
37 cash account, as other accounts of funds appear in the State
38 Treasury, and only the actual cash deposited to the fund must be
39 entered in the account.

40 **§264. Revolving fund**

41 The board may withdraw from the fund in the State Treasury,
42 without at the time presenting vouchers and itemized statements,
43 a sum not to exceed in the aggregate \$100,000 to be used as a
44 sum not to exceed in the aggregate \$100,000 to be used as a
45 sum not to exceed in the aggregate \$100,000 to be used as a
46 sum not to exceed in the aggregate \$100,000 to be used as a
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52 sum not to exceed in the aggregate \$100,000 to be used as a

2 revolving fund. The revolving fund must be deposited in banks
3 and under conditions that the board decides.

4 **§265. Expenditures**

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 must be made
10 upon presentation to the Treasurer of State of an abstract or
11 statement of these expenditures. The abstract must be in the
12 form required by the Treasurer of State.

14 **§266. Investments**

16 The board shall cause all money in the fund that 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 **§267. Deposits**

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

28 **§268. Valuation**

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

36 **§269. Actions**

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

44 **§270. Reimbursements**

46 The fund must annually reimburse the Treasurer of State for
47 services performed as custodian of the money of the fund.

50

2
3 **§271. Workers' Compensation Insurance Fund Board**

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

24 **§272. Chair**

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

28 **§273. Powers**

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

35 **§274. Rules**

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

39 **§275. Meetings; quorum**

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

2 **§276. Compensation**

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

8 **§277. Audit**

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

16 **§278. Powers of board**

18 The board may:

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

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

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

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

50 **§279. Reports of Superintendent of Insurance**

The statistical and actuarial data compiled by the fund must
 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 prescribes.

2
3 §281. Bond

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

11 §282. Duties

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

20 §283. Employees

21 With the board's approval, the executive director of the
22 fund shall appoint all employees, subject to the state personnel
23 law.

24 §284. Additional powers

25 In conducting the business and affairs of the fund, the
26 executive director of the fund may:

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

34 2. Annuities. Sell annuities covering compensation
35 benefits;

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

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

43 5. Insure. Insure against any loss considered advisable;

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

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

6
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.

16 **§285. Declaration of public purpose**

17
18 It is declared that the establishment of the fund is a
19 public purpose and use for which public money may be spent and
20 private property acquired and that the establishment is a
21 function of state concern.

22
23 **§286. Power to issue revenue bonds**

24
25 The board may issue revenue bonds and notes and refunding
26 bonds and notes for the purpose of organizing and establishing an
27 initial fund and continuing operations and exercising all powers
28 of the board.

29 **§287. Credit of State not pledged**

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

34 **§288. Bondholder's rights against fund**

35
36 The board shall cause to be written one or more bond
37 resolutions for the issuance of the revenue bonds authorized. The
38 resolution must clearly define those assets of the fund on which
39 bondholders have first claim. In any case in which payments to
40 claimants under the fund conflict with repayment to the
41 bondholder, the statement of priority found in the resolution
42 controls. In any case, the board shall ensure that the fund, as
43 supported by employer premiums and as reinsured, is sufficient at
44 all times to repay bondholders in accordance with the provisions
45 of the bonds.

2 **§289. Tax exemption**

4 Bonds issued under this chapter for essential and
governmental purposes are exempt from taxation.

6 **§290. No personal liability**

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

12 **§291. Negotiability of bonds**

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

20 **§292. Payment of claims**

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

30

32 **STATEMENT OF FACT**

34

36 This bill provides for workers' compensation insurance
38 through a state fund, thereby reducing the cost of state
40 employers providing workers' compensation coverage by
42 approximately 30%. The percentage of workers' compensation
44 premiums paid by state employers and returned to state workers in
46 the form of benefits has traditionally been in the range of 60%,
whereas, in 12 states that 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.

48 This bill provides a competitive state fund that would
50 compete with private insurance, giving state employers a choice
52 of placing their workers' compensation coverage with either
54 private insurance carriers or a state fund. Presumably, state
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

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

4