

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1433

H.P. 988

House of Representatives, April 4, 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

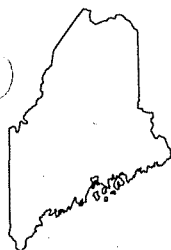
Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by President PRAY of Penobscot, Representative MITCHELL of Vassalboro and Senator ESTY of Cumberland.

STATE OF MAINE

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

An Act to Create a State Insurance 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. Maine State \$50/Day 39 MRSA §252
7 Insurance Fund and Expenses

8 Sec. 2. 24-A MRSA §401, as enacted by PL 1969, c. 132, §1, is
9 amended to read:

10 §401. "Mutual" insurer defined

11 A "mutual" insurer is an incorporated insurer without
12 permanent capital stock, and the governing body of which is
13 elected by its policyholders or those policyholders specified in
14 its charter, or by any reasonable combination of its
15 policyholders, guaranty fund stockholders, or guaranty fund
16 certificate holders, or by other reasonable method. The Maine
17 State Insurance Fund created in Title 39, chapter 7, is deemed to
18 be a "mutual" insurer when organized under this Title.
19

20 Sec. 3. 39 MRSA §2, sub-§7, as amended by PL 1977, c. 696,
21 §395, is further amended to read:

22 7. Workers' compensation insurance policy. "Workers'
23 compensation insurance policy" shall ~~mean~~ means a policy in such
24 form as the Insurance Superintendent of Insurance approves,
25 issued by any stock or mutual casualty insurance company or
26 association that may now or hereafter later be authorized to do
27 business in this State or issued by the Maine State Insurance
28 Fund, which in substance and effect guarantees the payment of the
29 compensation, medical benefits and expenses of burial provided
30 for, in such installment, at such time or times, and to such
31 person or persons and upon on such conditions as provided in this
32 Act ~~provided~~. Whenever a copy of a policy is filed, such the copy
33 certified by the Insurance Superintendent ~~shall be~~ of Insurance
34 is admissible as evidence in any legal proceeding ~~wherein~~ when
35 the original would be admissible.
36

37 Sec. 4. 39 MRSA §2, sub-§8, as amended by PL 1977, c. 696,
38 §396, is further amended to read:

39 8. Insurance company. "Insurance company" shall ~~mean~~ means
40 any casualty insurance company or association authorized to do
41 business in this State, including the Maine State Insurance Fund,
42 which may issue policies conforming to subsection 7. Whenever in
43 this Act relating to procedure the words "insurance company" are
44 used, they shall apply only to cases in which the employer has
45 secured the payment of compensation and other benefits by
46 insuring such payment under an a workers' compensation insurance
47 policy, instead of furnishing satisfactory proof of ~~his~~ the
48
49
50

2 employer's ability to pay compensation and benefits direct
directly to his the employer's employees.

4 No An insurance carrier shall-be is not qualified to issue an a
6 workers' compensation insurance policy covering any employees
8 working in this State unless it has and continuously maintains an
10 employee or claims agent within in this State empowered to
12 investigate claims arising under this chapter; sign agreements
14 for the payment of compensation as provided by this chapter; and
16 issue drafts or checks in payment of obligations arising under
18 this chapter in amounts of at least \$1,000.

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

16 CHAPTER 7

18 MAINE STATE INSURANCE FUND

20 §251. Definitions

22 As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

24 1. Board. "Board" means the Board of Directors of the
Maine State Insurance Fund.

26 2. Fund. "Fund" means the Maine State Insurance Fund
28 created in section 252.

30 3. Manager. "Manager" means the Manager of the Maine State
32 Insurance Fund.

34 §252. Creation; purpose; organization of fund

36 1. Fund created. The Maine State Insurance Fund is created
as a nonprofit independent public corporation. The fund must be
38 organized as a domestic mutual insurance company under Title 24-A.

40 2. Purpose. The fund is established for the purpose of
providing workers' compensation insurance to employers of this
42 State at the lowest possible cost and with the highest level of
service consistent with reasonable actuarial principles and the
44 financial integrity of the fund.

46 3. Board. The board consists of 7 members. In addition,
the Commissioner of Labor and the manager are ex officio members.

48 A. The initial board is appointed by the Governor and
consists of 7 members and the Commissioner of Labor. The
50 Governor shall initially appoint one member for a one-year
term, 2 members for a 2-year term, 2 members for a 3-year
52 term and 2 members for a 4-year term. After the terms of

2 the initial board members expire, the Governor shall appoint
3 one board member each year. The remaining 3 board members
4 are chosen by the fund's policyholders.

5 B. After the terms of the initial board members expire,
6 each board member must represent a policyholder and may be
7 an employee of a policyholder. At least 2 board members
8 must represent private, for-profit enterprises. One of the
9 4 members appointed by the Governor must represent the
10 State. No member of the board may represent or be an
11 employee of an insurance company.

12 C. Except as provided for initial appointments, each board
13 member shall hold office for a 4-year term or until a
14 successor is appointed and qualified. A vacancy is filled
15 for the remainder of the unexpired term in the same manner
16 as the former board member was selected.

17 D. The board shall annually elect a chair from among its
18 members and any other officers it considers necessary for
19 the performance of its duties.

20 E. Four members constitute a quorum of the board. Business
21 may not be acted on without a quorum being present. All
22 board decisions must be made by majority vote of the board.
23 The board shall set its own compensation, which may not
24 exceed \$50 per day and expenses. The board shall adopt
25 bylaws and shall determine the time and place of regular
26 meetings and the method for calling special meetings.

27 4. Fund management. The board has exclusive management and
28 control of the fund.

29 5. Powers and duties of board. The board has full power,
30 authority and jurisdiction over the fund.

31 A. The board may perform all acts necessary or convenient
32 in the exercise of any power, authority or jurisdiction over
33 the fund, either in the administration of the fund or in
34 connection with the insurance business to be carried on by
35 it under this chapter, as fully and completely as the
36 governing body of a private insurance carrier, to fulfill
37 the purposes of this chapter.

38 B. The board shall discharge its duties with the care,
39 skill, prudence and diligence under the circumstances that a
40 prudent director, acting in a similar capacity and familiar
41 with such matters, would use in conducting a similar
42 enterprise and purpose.

2 C. The board may appoint investment managers to manage,
3 acquire or dispose of any of the assets of the fund. An
4 investment manager may be designated as an investment agent.

5
6 (1) An investment manager is any fiduciary designated
7 by the board to manage, acquire or dispose of the
8 assets of the fund. The investment manager shall
9 acknowledge in writing that it is a fiduciary under the
10 fund.

11
12 (2) The board may delegate its investment powers to
13 investment managers of the fund. The purchase or sale
14 of any securities by an investment manager must be in
15 the name selected by the board. The authority of an
16 investment manager to purchase or sell the securities
17 for the fund must be evidenced by written authority
18 executed by the manager.

19
20 (3) The board may enter into agreements with an
21 investment manager setting forth the investment powers
22 and limitations of the investment manager. The board
23 shall require an investment manager to keep the board
24 currently informed of the nature and amount of the
25 investments made for the fund by the investment
26 manager. An investment manager is subject to the
27 instructions of the board.

28 6. Manager. The fund is under the administrative control
29 of the manager appointed by the board under section 255.

30
31 7. Personal liability excluded. The members of the board
32 and officers or employees of the fund are not liable personally,
33 either jointly or severally, for any debt or obligation created
34 or incurred by the fund.

35 §253. Power to insure

36
37 1. Insure workers' compensation liability. The fund may
38 insure an employer only against liability for compensation and
39 benefits under this Title or under the federal Longshore and
40 Harbor Workers' Compensation Act, 33 United States Code, Section
41 901 (1927), as amended. The fund must ensure the State as an
42 employer against its liability for compensation and benefits
43 under this Title or under the federal Longshore and Harbor
44 Workers' Compensation Act, 33 United States Code, Section 901
45 (1927), as amended.

46
47 §254. General powers

48
49 1. Powers. For the purpose of exercising the specific
50 powers granted in this chapter and effectuating the other
51 purposes of this chapter, the fund may:
52

- 2 A. Sue and be sued;
- 4 B. Have a seal and alter it at will;
- 6 C. Make, amend and repeal rules relating to the conduct of
8 the business of the fund;
- 10 D. Enter into contracts relating to the administration of
12 the fund or claims against employers insured by the fund and
14 for any other purpose consistent with this chapter;
- 16 E. Rent, lease, buy, pledge, mortgage or sell property in
18 its own name and construct or repair buildings necessary to
20 provide space for its operations;
- 22 F. Declare a dividend when there is an excess of assets
24 over liabilities and minimum surplus requirements consistent
26 with Title 24-A;
- 28 G. Pay medical expenses, rehabilitation expenses,
30 compensation due claimants of insured employers, salaries
32 and administrative and other expenses;
- 34 H. Hire personnel and set salaries and compensation. The
36 state personnel laws do not apply to any of the employees of
38 the fund or to the hiring of those employees. The State
40 Employees Labor Relations Act, Title 26, chapter 9-B, does
42 not apply to the fund and its employees;
- 44 I. Issue guaranty fund certificates, surplus notes or
46 debentures payable out of surplus, borrow money and agree to
48 pay any rate of return with respect to any guaranty fund
50 certificate, surplus note, debenture or other instrument,
52 calculated in any manner, and on such other terms as the
 board approves; and
- J. Perform all other functions and exercise all other
 powers of a domestic mutual insurance company.

§255. Manager

1. Appointment; qualifications. The board shall appoint a manager of the fund to be in charge of the day-to-day operation of the fund. The manager must have proven successful experience as an executive at the general management level. The manager is entitled to compensation as set by the board and shall serve at the will of the board.

2. Bond. Before assuming the duties of the office, the manager must qualify by giving an official bond in an amount and with sureties approved by the board. The manager shall file the

2 bond with the Secretary of State. The fund must pay the premium
3 for the bond from the account established in section 257.

4 **§256. Manager's powers**

6 Subject to the authority of the board and the provisions of
7 this chapter, the manager has the powers and duties prescribed in
8 this section.

10 1. Safety inspections; loss control services. The manager
11 shall have safety inspections of risks made and advisory services
12 on safety and health measures furnished to employers to the
13 maximum extent possible, consistent with the financial integrity
14 of the fund.

16 2. Disbursement of funds. The manager may act for the fund
17 in collecting and disbursing money necessary to administer the
18 fund and conduct the business of the fund.

20 3. Abstract summary. The manager shall have an abstract
21 summary of any audit or survey conducted.

24 4. Reinsurance. The manager may reinsure all or part of
25 any risk and may enter into agreements of reinsurance in the same
26 way and to the same extent as other insurance carriers.

28 5. General authority. The manager may perform all acts
29 necessary in the exercise of any power, authority or jurisdiction
30 over the fund, either in the administration of the fund or in
31 connection with the insurance business to be carried on by the
32 fund under this chapter, including the establishment of premium
33 rates.

34 **§257. Account**

36 1. State Compensation Account. There is created and
37 established under the jurisdiction and control of the fund a
38 revolving account known as the "State Compensation Account." The
39 account may not lapse. The manager shall deliver all money
40 collected or received under this chapter to the account. The
41 money in the account may be used by the fund in carrying out its
42 purposes under this chapter.

44 2. Property fund. All premiums and other money paid to the
45 fund, all property and securities acquired through the use of
46 money belonging to the fund, and all interest and dividends
47 earned on money belonging to the fund and deposited or invested
48 by the fund are the sole property of the fund and are used
49 exclusively for the operation and obligations of the fund. The
50 money of the fund is not state money. The property of the fund
51 is not state property.

2 3. No state appropriation. The fund may not receive any
3 state appropriation at any time other than for the purpose of
4 initial capitalization and initial administrative expenses, as
5 provided in section 261.

6 4. Investment of money in fund. The board may invest money
7 in the State Compensation Account in investments permitted by law
8 for a mutual insurance company. When selecting investments, the
9 primary goal of the board is the financial integrity of the fund,
10 but when investments of otherwise equal quality exist, the board
11 shall give preference to any investment that would provide a
12 direct benefit to the people of this State.

13 §258. Application of state laws

14 The fund is not considered a state agency or other
15 instrumentality of the State for any purpose. The fund is
16 subject to all state laws governing or applying to a private
17 mutual insurance company, including, but not limited to, Title
18 24-A, chapters 5 to 17. The insurance operations of the fund are
19 subject to all those provisions of Title 24-A and of this Title
20 applicable to a private insurance company that writes workers'
21 compensation insurance, including, but not limited to, Title
22 24-A, chapter 25, subchapter II-A. The Superintendent of
23 Insurance has the same powers with respect to the board as the
24 superintendent has with respect to a private workers'
25 compensation insurer under Title 24-A and this Title. The fund
26 is subject to the same income tax liability as a private mutual
27 insurance company in this State under Title 36, Part 8.

28 §259. Private independent insurance agents

29 Private independent insurance agents licensed to sell
30 workers' compensation insurance in this State may sell insurance
31 coverage for the fund according to rules adopted by the board.
32 The board shall by rule establish a schedule of commissions which
33 the fund will pay for the services of an agent. This section
34 does not prevent the fund from writing insurance coverage for
35 employers without the assistance of private independent insurance
36 agents.

37 §260. Reports and information

38 1. Annual report. The manager shall submit an annual
39 report to the Governor and Legislature indicating the business
40 done by the fund during the previous year and containing a
41 statement of the resources and liabilities of the fund and any
42 other information considered appropriate by the manager.

43 2. Statistical and actuarial data. The fund must compile
44 and maintain statistical and actuarial data related to the
45 determination of proper premium rate levels, the incidence of
46 and any other information considered appropriate by the manager.

2 work-related injuries, costs related to those injuries and any
4 other data that the fund considers desirable. The fund must
6 provide this data to the Superintendent of Insurance, the Chair
8 of the Workers' Compensation Commission and the Department of
10 Labor upon request.

12 **§261. Funding**

14 **1. Fund becomes operational upon appropriation. The fund**
16 **becomes operational only upon the receipt of funds provided by**
18 **appropriation of the Legislature. The board may defer acceptance**
20 **of all or part of any appropriation to the time that it desires,**
22 **but not more than 2 years from the date of the appropriation.**
24 **Any amount accepted by the fund, plus interest at the rate of 8%**
26 **a year calculated from the time that the fund accepts the**
28 **appropriation, must be amortized by the Treasurer of State over a**
30 **10-year period and must be repaid by the fund to the General**
32 **Fund in equal installments at the end of each fiscal year. The**
34 **Treasurer of State shall determine the date of the first payment,**
36 **except that the fund does not begin repayment unless there exists**
38 **sufficient earned surplus to comply with state law. Repayment**
40 **then begins under this section when sufficient earned surplus**
42 **exists.**

44 **2. Guaranty fund certificates, surplus notes or**
46 **debentures. Money advanced to the fund under subsection 1 must**
48 **be evidenced by guaranty fund certificates that permit the**
50 **issuance of other guaranty fund certificates, surplus notes,**
52 **debentures or other instruments with equal rights to payment out**
of surplus of the fund. In the event of any insufficiency, payments with respect to guaranty certificates may be made pro rata based on outstanding principal amounts of guaranty certificates, surplus notes, debentures or other instruments with equal rights. Any guaranty fund certificates or other instruments previously issued to evidence any money advanced to the fund under subsection 1 must be exchanged by the Treasurer of State for restated certificates in form and substance consistent with this section in order to facilitate the issuance by the fund of other guaranty fund certificates, surplus notes, debentures or other instruments as provided in this section. Any amounts accrued but unpaid pursuant to the terms of any outstanding guaranty certificate, surplus note, debenture or other instrument are deemed to be money advanced for the purposes of this chapter.

46 **Sec. 6. State Government required to insure with fund.** When the
48 Maine State Insurance Fund becomes operational upon the
50 acceptance of a sufficient amount of a legislative appropriation
52 under the Maine Revised Statutes, Title 19, section 261, the
State shall purchase workers' compensation insurance from the
Maine State Insurance Fund, covering all state employees. The
insurance policy takes effect on the first day of the next fiscal
year after

2 the Maine State Insurance Fund becomes operational. Any state
employee whose employment is terminated due to this requirement
4 must be given preference in hiring for suitable positions within
the Maine State Insurance Fund.

8 STATEMENT OF FACT

10 The bill establishes the Maine State Insurance Fund as an
independent mutual insurance company. The purpose of the company
12 is to provide workers' compensation insurance to employers of
this State at the lowest possible cost and with the highest
14 possible level of services consistent with the financial
integrity of the fund.

16 The structure of the Maine State Insurance Fund is patterned
18 primarily after a similar state mutual insurance company
established in Minnesota. The fund is not established as a state
20 agency or instrumentality of the State in any way. It is created
as an independent mutual insurance company and is subject to all
22 other state laws governing mutual insurers to the same extent as
any private mutual insurance company. The fund is under the
24 direction of a board of directors, a majority of whom are
appointed by the Governor. The remaining directors are selected
26 by policyholders of the fund. All directors must represent a
policyholder. The board of directors is authorized to hire
28 investment managers to assist the board in investing the assets
of the fund. The board of directors will select a manager who is
30 responsible for the day-to-day direction of the operation of the
fund. The fund is authorized, but not required, to use private
32 insurance agents to sell workers' compensation insurance.

34 The fund retains only limited connections with the State.
The fund is required to insure the State for workers'
36 compensation liability. As soon as the fund becomes operational,
the State is required to purchase workers' compensation coverage
38 from the fund. The fund will become operational only when it
receives sufficient initial capitalization from the State.
40 Separate legislation authorizes a bond issue in the amount of
\$10,000,000 to be made available to the fund to cover its initial
42 capitalization and administrative expenses. This money will be
loaned to the fund, which can draw upon the full \$10,000,000 as
44 it finds necessary over a period of 2 years. This allows the
fund to reduce its interest costs by accepting the state money
46 only as the fund requires it. The fund will repay this money to
the State, under a schedule established by the Treasurer of
48 State, through a portion of its earned surplus.

50 The intent of this bill is to ensure the availability of
affordable workers' compensation insurance to the employers of
52 this State, particularly small employers. State insurance funds

2 in other states have proven to be effective vehicles to hold down
the costs of workers' compensation insurance and to provide
4 better services to employers who insure with those state funds.
This bill ensures that a neutral, nonprofit alternative to the
6 commercial insurance industry exists in the State to assist
employers in obtaining workers' compensation insurance at a
reasonable cost and assist the State in regulating and evaluating
8 the performance of private workers' compensation insurance
carriers.
10