

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1449, L.D. 2061, Bill, "An Act to Allow Elementary and Secondary Schools to Obtain Insurance Coverage through the Risk Management Division"

Amend the bill by striking out the title and substituting the following:

**'An Act to Improve and Expand the Operation of the Risk Management Division'**

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

**'Sec. 1. 5 MRSA §1728-A, sub-§1, as amended by PL 1991, c. 376, §21, is further amended to read:**

**1. Duties.** The director shall provide insurance advice and services for the State Government and any department or agency thereof of State Government for all forms of insurance, except for those departments or agencies and those types of insurance otherwise provided for by law. The director shall provide insurance advice and services for family foster homes, as defined in Title 22, section 8101, subsection 3; respite care providers, as defined in Title 34-B, section 6201, subsection 2-A; group homes for persons receiving services from the Department of Mental Health and Mental Retardation, Bureau of Mental Retardation under Title 34-B, chapter 5 and from the Department of Mental Health and Mental Retardation, Bureau of Children with Special Needs under Title 34-B, chapter 6; specialized children's homes, as defined in Title 22, section 8101, subsection 5; the Casco Bay Island Transit District created by Private and Special Law 1981, chapter 22; and commercial applicators and spray contracting firms that are required to provide proof of financial responsibility in custom application pursuant to Title 22, section 1471-D, subsection 4, and private applicators as defined in Title 22, section 1471-C, subsection 22, who may be required to provide proof of insurance. The director is responsible for

2 the acquisition and administration of all insurance purchased by  
3 the State, including the authority to purchase, on a competitive  
4 bid basis, insurance for the State for automobile, fire,  
5 liability and any other type of coverage necessary to protect the  
6 State from financial loss. The director may enter into contracts  
7 for various types of claims management services in order to  
8 ensure the most economically advantageous insurance protection in  
9 the operation of the State's insurance coverage program. In  
10 these regards, the director has the following duties:

11 A. To review annually the entire subject of insurance as it  
12 applies to all state property and activities and other  
13 persons pursuant to this section, and to provide to the  
14 commissioner a statement of its activities during the year  
15 ending the preceding June 30th. This report shall must  
16 include:

- 17 (1) An evaluation of the state insurance program;
- 18 (2) A complete statement of all types and costs of  
19 insurance in effect;
- 20 (3) Names of agents and companies of record; and
- 21 (4) Such other matters as the director determines to  
22 be appropriate and necessary or as the commissioner may  
23 request;

24 B. To recommend to the commissioner such insurance  
25 protection as the director may deem necessary or desirable  
26 for the protection of all state property or activities or  
27 other insureds under this section;

28 C. Pursuant to programs approved by the commissioner, to  
29 provide insurance protection for state property and  
30 liability insurance in accordance with the Maine Tort Claims  
31 Act, Title 14, section 8116, and premises liability, when  
32 required by a state lease or private property approved by  
33 the Attorney General, by self-insured retention, as  
34 provided, or purchase of insurance from companies or agents  
35 licensed to do business in this State, or by both, to effect  
36 the best possible contracts as to services, coverages and  
37 costs. The purchase of insurance under this section normally  
38 shall must be made upon competitive bidding, except that the  
39 director may, in appropriate circumstances, purchase  
40 insurance by negotiation.  
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2 In the event of the purchase of insurance upon competitive  
3 bidding by qualified insurers, the director shall announce  
4 the low bid at a meeting advertised for the opening of bids,  
5 which, when approved by the commissioner, shall constitute  
6 an award of a contract of insurance;

7  
8 D. To determine and review the values of property in which  
9 the State has an insurable or legal interest and recommend  
10 limits and types of insurance protection for that property;

11  
12 E. To establish and promote safety and other loss  
13 prevention programs;

14 F. To receive and, with the assistance of the Attorney  
15 General, administer all claims for personal injury and  
16 property damage against the State; and

17 G. With the assistance of the Attorney General, to pursue  
18 all claims against 3rd parties in all cases in which the  
19 State may be subrogated to the rights of injured employees  
20 or where damage to state property may have resulted from the  
21 negligence of a 3rd party; and

22  
23 H. To administer the fund established by section 1737.

24  
25 **Sec. 2. 5 MRSA §1728-A, sub-§§1-A and 5 are enacted to read:**

26  
27 1-A. Additional duties. The director shall provide  
28 insurance advice and services for all lines of property and  
29 casualty insurance for school administrative units and for  
30 private schools approved for tuition purposes more than 60% of  
31 whose students are publicly funded.

32  
33 5. Actuarial services. The director shall retain the  
34 services of a member of the American Academy of Actuaries who is  
35 qualified as a casualty and loss reserve specialist as defined by  
36 the National Association of Insurance Commissioners and who is a  
37 member of a nationally recognized actuarial firm each fiscal year  
38 to provide advice in the development of insurance premiums  
39 charged for the succeeding fiscal year by the division and make  
40 recommendations to the commissioner and the director regarding  
41 the level of premium and reserves necessary to protect the fund  
42 established by section 1737. Within 30 days of receiving the  
43 report of the actuary, the director shall consult with the  
44 Superintendent of Insurance about the recommended levels of  
45 premiums and reserves. Within 60 days of receiving the  
46 recommendations from the actuarial firm, the director shall  
47 report to the Department of Professional and Financial  
48 Regulation, Bureau of Insurance and to the joint standing

committee of the Legislature having jurisdiction over banking and insurance matters stating the recommended levels of premium and reserves, the director's implementation of those levels and any reasons for deviations from the recommendations in order to make the fund substantially actuarially sound.

Sec. 3. 5 MRSA §1731, as repealed and replaced by PL 1991, c. 591, Pt. III, §11, is amended to read:

**§1731. Reserve fund for self-insured retention losses**

A reserve fund, in this chapter called the "self-insurance fund," is created to indemnify the State or the State's designated payee for self-insured retention losses and related loss adjustment expenses from those perils insured against under a deductible or self-insured retention program, as recommended by the director and approved by the commissioner. With the approval of the commissioner, the self-insurance fund may be used for loss prevention programs administered by either the Risk Management Division or the Bureau of Human Resources. The total amount of the fund provided for loss prevention programs in any given year may not exceed 5% of the self-insurance fund as of July 1st of that fiscal year. The self-insurance fund is a continuing fund and may not lapse. Funds provided from the ~~reserve~~ self-insurance fund to the Bureau of Human Resources are similarly nonlapsing and are carried forward through the Bureau of Human Resources' Dedicated Revenue Account.

As approved by the commissioner, up to 15% of the amount of the self-insurance fund as of July 1st of each fiscal year may be used to ensure the prompt payment of workers' compensation claims for state agencies as required by law. Any funds so transferred shall must be repaid to the fund by use of a written agreement which that specifies reimbursement within the same biennium in which the transfer was made.

~~With the approval of the commissioner, up to 15% of the unreserved amount of the fund as of July 1, 1989, may be used for the initial capitalization of the Workers' Compensation Management Fund established by section 1833.~~

Sec. 4. 5 MRSA §1731-A, first ¶, as amended by PL 1989, c. 857, §21, is further amended to read:

Deductible or self-insured retention provisions hereunder may not exceed 25% of the self-insurance fund as of July 1st of the current fiscal year per occurrence with respect to any risk of loss.

2           Sec. 5. 5 MRSA §1732, as amended by PL 1985, c. 785, Pt. A,  
4           §62, is further amended to read:

6           **§1732. Administration**

8           The self-insurance fund shall--be is administered by the  
10           Commissioner of Administration Financial and Administrative  
12           Services. The commissioner shall deposit the self-insurance fund  
14           with the Treasurer of State for investment. All proceeds of such  
16           that investment shall accrue to the self-insurance fund.

18           Sec. 6. 5 MRSA §1733, as amended by PL 1989, c. 857, §22, is  
20           further amended to read:

22           **§1733. Capitalization of the fund**

24           The self-insurance fund is capitalized by legislative  
26           appropriations, payments from state departments and agencies,  
28           investment income accruing to the self-insurance fund and by such  
30           other means as the Legislature may approve.

32           ~~Appropriations--and--payments--to--the--fund--in--respect--to~~  
34           ~~general--fund--departments--and--agencies--may--not--exceed--an--amount~~  
36           ~~equal--to--the--difference--between--the--premium--for--insurance~~  
38           ~~proposed--to--be--purchased--and--the--premium--for--mandatory--deductible~~  
40           ~~or--full--insurance--coverage--plus--a--pro--rata--share--of--the--cost--of~~  
42           ~~the--stop--loss--insurance.--In--any--instance--in--which--the--State--has--a~~  
44           ~~100%--self--insured--retention,--the--premium--must--be--that--for--full~~  
46           ~~insurance--coverage--adjusted--for--any--mandatory--deductible.~~

48           ~~All--other--state--departments--and--agencies,--except--those~~  
              ~~specifically--excluded--by--law,--shall--pay--to--the--fund--premiums~~  
              Payments to the self-insurance fund from state departments and  
              agencies are calculated on a pro rata basis as determined by the  
              director and based on the prior claims experience of the  
              departments or agencies. ~~In--any--instance--in--which--the--State--has--a~~  
              ~~100%--self--insured--retention,--the--premium--must--be--that--for--full~~  
              ~~insurance--coverage--adjusted--for--any--mandatory--deductible.~~

              Whenever possible, all premiums payments referred to in this  
              section are computed on the basis of rates promulgated by a  
              recognized rating authority.

              Sec. 7. 5 MRSA §1734, as amended by PL 1983, c. 349, §16, is  
              further amended to read:

**§1734. Exemption from requirements of Title 24-A**

2 The self-insurance fund shall may not exceed 2% of the then  
4 current value of all state-insured or self-insured retention  
6 property protected by the self-insurance fund as determined by  
the director.

8 If the self-insurance fund reaches or exceeds the maximum  
10 amount specified in this section, payments to the self-insurance  
12 fund, as specified in section 1733, shall must cease and any  
14 excess shall must be transferred into the General Fund not later  
than the end of the first quarter of the next fiscal year.

16 Payments to the self-insurance fund shall may not begin  
18 again until such time as the amount in the self-insurance fund  
drops below the maximum amount specified in this section.

20 **Sec. 8. 5 MRSA §1735**, as amended by PL 1983, c. 349, §17, is  
22 further amended to read:

24 **§1735. Depletion of fund**

26 In the event that payments from the self-insurance fund  
should reduce it below \$1,000,000, the commissioner shall  
28 recommend to the Legislature that funds be appropriated to  
30 restore the self-insurance fund up to the maximum amount it had  
previously attained.

32 **Sec. 9. 5 MRSA §1736**, as amended by PL 1989, c. 857, §23, is  
34 further amended to read:

36 **§1736. Payment of losses**

38 Pursuant to the recommendation of the director, the  
commissioner shall cause payments from the self-insurance fund or  
40 proceeds of insurance purchased in accordance with this chapter,  
42 or both, to be made available for repair or replacement of  
insured property and payment of losses and loss adjustment  
44 expenses.

46 **Sec. 10. 5 MRSA §§1737 and 1738** are enacted to read:

48 **§1737. State-administered insurance fund**

**1. Creation of state-administered fund.** A  
state-administered insurance fund, in this chapter called the  
"state-administered fund," is created to provide insurance  
coverage in instances when the State or the director are directed  
or authorized to offer insurance or insurance advice or

2 services to persons and entities other than the State or state  
3 departments and agencies. The state-administered fund contains  
4 such reserves as the commissioner determines are actuarially  
5 sufficient to meet anticipated claims against the  
6 state-administered fund and to pay administrative expenses  
7 specifically related to the state-administered fund.

8 2. Eligibility for participation in state-administered  
9 fund. The state-administered fund must offer insurance coverage  
10 to persons or entities other than state departments or agencies  
11 in those instances when the State or the director is statutorily  
12 directed to provide insurance or insurance advice or services.  
13 The state-administered fund must also offer insurance coverage in  
14 those instances when the commissioner determines that it is  
15 appropriate to do so based upon consideration of the risks  
16 involved and the governmental objectives that would be served by  
17 that coverage. The commissioner has the discretion to include  
18 state departments or agencies within the coverage of the  
19 state-administered fund instead of the self-insurance fund if the  
20 commissioner determines that the inclusion of those departments  
21 or agencies is necessary to allow the state-administered fund as  
22 a whole to offer insurance at affordable rates, consistent with  
23 the actuarial soundness of the state-administered fund.

24 3. Rejection of risk. When the director determines that a  
25 risk may be prejudicial to the state-administered fund, the  
26 director may refuse to include that risk in the  
27 state-administered fund until such time as hazards of the risk  
28 have been removed or ameliorated to a satisfactory degree.

29 4. Capitalization of state-administered fund. The  
30 state-administered fund must be capitalized by payments from  
31 persons or entities insured by the fund, payments by insurance or  
32 reinsurance companies and by such other means as the Legislature  
33 approves. In establishing the initial capitalization of the  
34 state-administered fund, the commissioner shall transfer from the  
35 self-insurance fund to the state-administered fund an amount  
36 determined to be the existing balance attributable to any risks  
37 formerly covered by the self-insurance fund that will be covered  
38 in the future by the state-administered fund. The commissioner  
39 shall deposit the state-administered fund with the Treasurer of  
40 State for investment. All proceeds of that investment accrue to  
41 the state-administered fund.

42 5. Payments from self-administered fund. Payments from the  
43 state-administered fund may be made to pay or settle claims  
44 insured by the state-administered fund and to pay administrative  
45 expenses and adjustment and defense costs specifically related to  
46 the state-administered fund.



2 the state-administered fund. The rights of any persons or  
4 entities insured by the state-administered fund are limited to  
6 the extent specified in the contracts of insurance entered into  
8 between those persons or entities and the director. Persons or  
10 entities insured by the state-administered fund do not have any  
12 right of recovery except against the assets of the  
14 state-administered fund, and such persons or entities do not have  
16 recourse against the general fund or against any other assets of  
18 the State.

20 6. Excess insurance. The state-administered fund may  
22 purchase excess insurance so as to limit its exposure as  
24 recommended by the commissioner.

26 7. Powers and duties of director. In connection with the  
28 state-administered fund, the director may:

30 A. Establish and promote safety and loss prevention  
32 programs;

34 B. Administer the adjustment of claims against the  
36 state-administered fund or claims against parties insured by  
38 the state-administered fund;

40 C. Obtain legal and other services necessary to administer  
42 or defend claims against persons or entities insured by the  
44 state-administered fund or pursue claims against 3rd parties  
46 in cases when the entities insured may be subrogated to the  
rights of injured employees or when damage to an insured  
entity's property may have resulted from the negligence of a  
3rd party;

D. Establish rates for insurance coverage by the  
state-administered fund so that the state-administered fund  
operates on an actuarially sound basis; and

E. Establish deductibles or retentions determined necessary  
for the efficient operation of the state-administered fund.

40 8. Limitation on use of state-administered fund. The  
42 state-administered fund may be used for insurance purposes in  
44 accordance with this section only and the assets of the  
46 state-administered fund may not be transferred to meet any  
budgetary shortfall or to pay any uninsured expenses.

9. No expansion of liability under the Maine Tort Claims  
Act. No insurance coverage provided by the state-administered

2 fund to any person, entity, department or agency that is a  
3 "governmental agency" as defined by Title 14, section 8102,  
4 subsection 2 or an "employee" as defined by Title 14, section  
5 8102, subsection 1 may increase the potential liability of that  
6 person, entity, department or agency beyond the limits set forth  
7 in Title 14, chapter 741.

8 10. Assistance from the Bureau of Insurance. The  
9 Department of Professional and Financial Regulation, Bureau of  
10 Insurance shall provide assistance to the director upon the  
11 request of the director and upon a determination by the  
12 Superintendent of Insurance that the Bureau of Insurance is  
13 capable of providing the requested assistance.

14 §1738. Exemption from requirement of Title 24-A.

15 In performing the functions authorized by this chapter, the  
16 self-insurance fund, the state-administered fund, the  
17 commissioner and the director are not subject to Title 24-A.

18 Sec. 11. 22 MRSA §8101, sub-§5, as enacted by PL 1981, c. 260,  
19 §4, is amended to read:

20 5. Specialized children's home. "Specialized children's  
21 home" means a children's home where care is provided to no more  
22 than 4 moderately to severely handicapped children by a caretaker  
23 who is specifically educated and trained to provide for the  
24 particular needs of each child placed. The total number of  
25 children in a specialized children's home may not exceed 4,  
26 including the caretaker's legal children under 16 years of age,  
27 with no more than 2 children under the age of 2. A specialized  
28 children's home licensed by the Department of Human Services is  
29 eligible for insurance pursuant to Title 5, section 1728-A. In  
30 any action for damages against a specialized children's home  
31 insured pursuant to Title 5, section 1728-A for damages covered  
32 under that policy, the claim for and award of those damages,  
33 including costs and interest, may not exceed \$300,000 for any and  
34 all claims arising out of a single occurrence.

35 Sec. 12. 34-B MRSA §5201, sub-§4, as enacted by PL 1983, c.  
36 459, §7, is amended to read:

37 4. Community-based services. Ensuring that mentally  
38 retarded persons residing in community residential facilities,  
39 including nursing homes, boarding homes, foster homes, group  
40 homes or halfway houses licensed by the Department of Human  
41 Services are provided, insofar as possible, with, residential  
42 accommodations and access to habilitation services appropriate to  
43 their needs. A group home licensed by the Department of Human  
44 Services are provided, insofar as possible, with, residential  
45 accommodations and access to habilitation services appropriate to  
46 their needs. A group home licensed by the Department of Human  
47 Services are provided, insofar as possible, with, residential  
48 accommodations and access to habilitation services appropriate to  
49 their needs. A group home licensed by the Department of Human

2 Services is eligible for insurance pursuant to Title 5, section  
3 1728-A. In any action for damages against a group home insured  
4 pursuant to Title 5, section 1728-A for damages covered under  
5 that policy, the claim for and award of those damages, including  
6 costs and interest, may not exceed \$300,000 for any and all  
7 claims arising out of a single occurrence; and

### 8 FISCAL NOTE

10 The additional costs associated with administering 2  
11 insurance funds; providing insurance advice and services to  
12 schools, group homes and specialized children's homes; and  
13 retaining actuarial services to annually provide advice on  
14 insurance premium development can be absorbed within existing  
15 resources of the Risk Management Division within the Department  
16 of Administrative and Financial Services.

18 The Bureau of Insurance within the Department of  
19 Professional and Financial Regulation can absorb the costs  
20 associated with providing assistance to the Risk Management  
21 Division regarding insurance matters.

22 The Department of Human Services can absorb the costs  
23 associated with liability insurance for licensed specialized  
24 foster homes within its budgeted resources.

26 Schools that choose to self-insure through the Risk  
27 Management Division of the Department of Administrative and  
28 Financial Services could realize savings in insurance  
29 expenditures. Any local savings will reduce future General Fund  
30 appropriations for general purpose aid for local schools.

### 34 STATEMENT OF FACT

36 This amendment adds the provision of insurance advice and  
37 services for group homes for children and persons with mental  
38 retardation and specialized children's homes to the insurance  
39 responsibilities of the Risk Management Division.

40 This amendment divides the self-insurance fund administered  
41 by the Risk Management Division into 2 funds. One fund would be  
42 for state property and one, designated in this amendment as the  
43 "state-administered fund" would be for nonstate entities.  
44 Recovery against the state-administered fund is limited by  
45 contract provision and is limited to the assets of the fund as a  
46 maximum. The state-administered fund must be actuarially sound  
47 and may purchase excess insurance. The assets may be used only  
48

COMMITTEE AMENDMENT "A" to H.P. 1449, L.D. 2061

2 for insurance purposes. Provision of insurance through the  
state-administered fund does not expand tort liability beyond the  
4 limits of the Maine Tort Claims Act, Maine Revised Statutes,  
Title 14, chapter 741.

6 The amendment makes several technical changes to the risk  
management laws to separate provisions that would apply to the  
8 self-insurance fund and those that would apply to the  
state-administered fund. In performing the functions of both  
10 funds, the Commissioner of Financial and Administrative Services  
and the Director of the Risk Management Division are not subject  
12 to insurance regulations under Title 24-A.

14 This amendment also adds a fiscal note.

Reported by the Majority of the Committee on Banking and Insurance  
Reproduced and distributed under the direction of the Clerk of the  
House  
3/17/92 (Filing No. H-1141)