

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 586

H.P. 460

House of Representatives, February 22, 1993

An Act to Allow Elementary and Secondary Schools to Obtain Insurance Coverage through the Bureau of General Services.

Reference to the Committee on Education suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Vassalboro.
Cosponsored by Representatives: CATHCART of Orono, CHASE of China, FAIRCLOTH of Bangor, GOULD of Greenville, KONTOS of Windham, LARRIVEE of Gorham, MELENDY of Rockland, MORRISON of Bangor, NORTON of Winthrop, O'GARA of Westbrook, OLIVER of Portland, PFEIFFER of Brunswick, RAND of Portland, RYDELL of Brunswick, ST. ONGE of Greene, STEVENS of Orono, Senator: O'DEA of Penobscot.

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

2
4 Sec. 1. 5 MRSA §1728-A, sub-§1, as amended by PL 1991, c. 376,
§21, is further amended to read:

6 1. **Duties.** The director shall provide insurance advice and
8 services for the State Government and any department or agency
thereof of State Government for all forms of insurance, except
10 for those departments or agencies and those types of insurance
12 otherwise provided for by law. The director shall provide
insurance advice and services for family foster homes, as defined
14 in Title 22, section 8101, subsection 3; respite care providers,
as defined in Title 34-B, section 6201, subsection 2-A; group
16 homes for persons receiving services from the Department of
Mental Health and Mental Retardation, Bureau of Mental
18 Retardation under Title 34-B, chapter 5 and from the Department
of Mental Health and Mental Retardation, Bureau of Children with
20 Special Needs under Title 34-B, chapter 6; specialized children's
homes, as defined in Title 22, section 8101, subsection 5; the
22 Casco Bay Island Transit District created by Private and Special
Law 1981, chapter 22; and commercial applicators and spray
24 contracting firms that are required to provide proof of financial
responsibility in custom application pursuant to Title 22,
26 section 1471-D, subsection 4, and private applicators as defined
in Title 22, section 1471-C, subsection 22, who may be required
28 to provide proof of insurance. The director is responsible for
the acquisition and administration of all insurance purchased by
30 the State, including the authority to purchase, on a competitive
bid basis, insurance for the State for automobile, fire,
32 liability and any other type of coverage necessary to protect the
State from financial loss. The director may enter into contracts
34 for various types of claims management services in order to
ensure the most economically advantageous insurance protection in
the operation of the State's insurance coverage program. ~~In~~
36 ~~these regards,--the~~ The director has the following duties:

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

- 44 (1) An evaluation of the state insurance program;
- 46 (2) A complete statement of all types and costs of
48 insurance in effect;
- 50 (3) Names of agents and companies of record; and

2 (4) ~~Sueh--other~~ Other matters as that the director
determines to be appropriate and necessary or as the
4 commissioner may--~~request~~ requests;

6 B. To recommend to the commissioner ~~sueh~~ insurance
protection as that the director may--~~deem~~ determines
8 necessary or desirable for the protection of all state
property or activities or other insureds under this section;

10 C. Pursuant to programs approved by the commissioner, to
provide insurance protection for state property and
12 liability insurance in accordance with the Maine Tort Claims
Act, Title 14, section 8116, and premises liability, when
14 required by a state lease or private property approved by
the Attorney General, by self-insured retention, as
16 provided, or purchase of insurance from companies or agents
licensed to do business in this State, or by both, to effect
18 the best possible contracts as to services, coverages and
costs. The purchase of insurance under this section normally
20 shall must be made upon competitive bidding, except that the
director may, in appropriate circumstances, purchase
22 insurance by negotiation.

24 In the event of the purchase of insurance upon competitive
bidding by qualified insurers, the director shall announce
26 the low bid at a meeting advertised for the opening of bids,
which, when approved by the commissioner, shall constitute
28 an award of a contract of insurance;

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

34 E. To establish and promote safety and other loss
prevention programs;

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

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

46 H. To administer the fund established by section 1737.

48 **Sec. 2. 5 MRSA §1728-A, sub-§§1-A and 5** are enacted to read:
50

1-A. Additional duties. The director shall provide insurance advice and services for all lines of property and casualty insurance for school administrative units and for private schools that are approved for tuition purposes when more than 60% of the schools' students are publicly funded.

5. Actuarial services. Each fiscal year the director shall retain the services of a member of the American Academy of Actuaries who is qualified as a casualty and loss reserve specialist as defined by the National Association of Insurance Commissioners and who is a member of a nationally recognized actuarial firm each fiscal year to provide advice in the development of insurance premiums charged for the succeeding fiscal year by the division and make recommendations to the commissioner and the director regarding the levels of premiums and reserves necessary to protect the fund established by section 1737. Within 30 days of receiving the report of the actuary, the director shall consult with the Superintendent of Insurance about the recommended levels of premiums and reserves. Within 60 days of receiving the recommendations from the actuarial firm, the director shall report to the Department of Professional and Financial 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 premiums 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 MRS §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 Bureau of General Services or the Bureau of Human Resources. The total amount of the self-insurance 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.

2 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
4 used to ensure the prompt payment of workers' compensation claims
for state agencies as required by law. Any funds so transferred
6 shall must be repaid to the self-insurance fund by use of a
written agreement which that specifies reimbursement within the
8 same biennium in which the transfer was made.

10 ~~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
12 Management Fund established by section 1833.~~

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

16 Deductible or self-insured retention provisions hereunder
18 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
20 of loss.

22 **Sec. 5. 5 MRSA §1732,** as amended by PL 1991, c. 780, Pt. Y,
§52, is further amended to read:

24 **§1732. Administration**

26 The self-insurance fund ~~must~~ is administered by the
28 Commissioner of Administrative and Financial Services. The
commissioner shall deposit the self-insurance fund with the
30 Treasurer of State for investment. All proceeds of such that
investment accrue to the self-insurance fund.

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

36 **§1733. Capitalization of the fund**

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

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

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

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

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

15 **§1734. Exemption from requirements of Title 24-A**

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

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

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

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

30 **§1735. Depletion of fund**

31 ~~In the event that~~ If payments from the self-insurance fund
32 should reduce ~~it~~ the fund below \$1,000,000, the commissioner
33 shall recommend to the Legislature that funds be appropriated to
34 restore the self-insurance fund up to the maximum amount ~~it had~~
35 previously attained.

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

38 **§1736. Payment of losses**

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

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

10 **§1737. State-administered insurance fund**

12 **1. Creation of state-administered fund.** A
13 state-administered insurance fund, in this chapter called the
14 "state-administered fund," is created to provide insurance
15 coverage in instances when the State or the director is directed
16 or authorized to offer insurance or insurance advice or services
17 to persons and entities other than the State or state departments
18 and agencies. The state-administered fund contains reserves that
19 the commissioner determines are actuarially sufficient to meet
20 anticipated claims against the state-administered fund and to pay
21 administrative expenses specifically related to the
22 state-administered fund.

24 **2. Eligibility for participation in state-administered**
25 **fund.** The state-administered fund must offer insurance coverage
26 to persons or entities other than state departments or agencies
27 in those instances when the State or the director is statutorily
28 directed to provide insurance or insurance advice or services.
29 The state-administered fund must also offer insurance coverage in
30 those instances when the commissioner determines that it is
31 appropriate to do so based upon consideration of the risks
32 involved and the governmental objectives that would be served by
33 that coverage. The commissioner has the discretion to include
34 state departments or agencies within the coverage of the
35 state-administered fund instead of the self-insurance fund if the
36 commissioner determines that the inclusion of those departments
37 or agencies is necessary to allow the state-administered fund as
38 a whole to offer insurance at affordable rates, consistent with
39 the actuarial soundness of the state-administered fund.

40 **3. Rejection of risk.** When the director determines that a
41 risk may be prejudicial to the state-administered fund, the
42 director may refuse to include that risk in the
43 state-administered fund until hazards of the risk have been
44 removed or ameliorated to a satisfactory degree.

45 **4. Capitalization of state-administered fund.** The
46 state-administered fund must be capitalized by payments from
47 persons or entities insured by that fund, by payments from
48 insurance or reinsurance companies and by any other means the
49 commissioner determines appropriate.

Legislature approves. In establishing the initial capitalization of the state-administered fund, the commissioner shall transfer from the self-insurance fund to the state-administered fund an amount determined to be the existing balance attributable to any risks formerly covered by the self-insurance fund that will be covered in the future by the state-administered fund. The commissioner shall deposit the state-administered fund with the Treasurer of State for investment. All proceeds of that investment accrue to the state-administered fund.

5. Payments from self-administered fund. Payments may be made from the state-administered fund to pay or settle claims insured by the state-administered fund and to pay administrative expenses and adjustment and defense costs specifically related to the state-administered fund. The rights of any persons or entities insured by the state-administered fund are limited to the extent specified in the contracts of insurance entered into between those persons or entities and the director. Persons or entities insured by the state-administered fund do not have any right of recovery except against the assets of the state-administered fund, and those persons or entities do not have recourse against the General Fund or against any other assets of the State.

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

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

A. Establish and promote safety and loss prevention programs;

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

C. Obtain legal and other services necessary to administer or defend claims against persons or entities insured by the state-administered fund or pursue claims against 3rd parties 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

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

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

10 9. Expansion of liability under the Maine Tort Claims Act.
11 Insurance coverage provided by the state-administered fund to a
12 person, entity, department or agency that is a "governmental
13 entity" as defined by Title 14, section 8102, subsection 2 or an
14 "employee" as defined by Title 14, section 8102, subsection 1 may
15 not increase the potential liability of that person, entity,
16 department or agency beyond the limits set forth in Title 14,
17 chapter 741.

18 10. Assistance from the Bureau of Insurance. The
19 Department of Professional and Financial Regulation, Bureau of
20 Insurance shall provide assistance to the director upon the
21 request of the director and upon a determination by the
22 Superintendent of Insurance that the Bureau of Insurance is
23 capable of providing the requested assistance.

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

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

28 Sec. 11. 22 MRSA §8101, sub-§5, as enacted by PL 1981, c. 260,
29 §4, is amended to read:

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

50

