

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1086, L.D. 1465, Bill, "An Act to Amend Statutory Provisions Regarding Risk Management Funds"

Amend the bill in section 1 in that part designated "~~§1728-A.~~" in subsection 1 by striking out all of the first paragraph (page 1, lines 8 to 35 in L.D.) and inserting in its place the following:

1. Duties. The director shall provide insurance advice and services for all forms of insurance for the State Government and any department or agency thereof of State Government except for those departments or agencies and those types of insurance otherwise provided for by law through the self-insurance fund and to other entities designated as entitled to advice and services through the state-administered fund pursuant to section 1737 ~~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; 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 the acquisition and administration of all insurance purchased by the State, including the authority to purchase ~~on a competitive bid basis,~~ insurance for the State for automobile, fire, liability and any other type of coverage necessary to protect the State from financial loss. The director may enter into contracts for various types of claims management services in order to ensure the most economically advantageous

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insurance protection in the operation of the State's insurance coverage program. In these regards, the director has the following duties:

Further amend the bill in section 1 in that part designated "§1728-A." in subsection 1 by striking out all of paragraph I and inserting in its place the following:

'I. On or before December 31, 1996 and every 3 years thereafter, to submit to the Commissioner of Administrative and Financial Services a report on the availability and affordability of insurance advice and services to those entities participating in the state-administered fund pursuant to section 1737 and to make specific recommendations for the removal from the state-administered fund of those entities that do not qualify.'

Further amend the bill in section 9 by striking out all of that part designated "§1737." and inserting in its place the following:

'§1737. State-administered fund

1. Creation of state-administered fund. A reserve fund, referred to in this chapter as the "state-administered fund," is created to indemnify persons and entities eligible for participation pursuant to subsection 2 for 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 of Administrative and Financial Services. With the approval of the commissioner, the state-administered fund may be used for loss prevention programs administered by the risk management division within the Bureau of General Services. The total amount of the state-administered fund provided for loss prevention programs in any given year may not exceed 5% of the state-administered fund as of July 1st of that fiscal year. The state-administered fund is a continuing fund and does not lapse.

2. Eligibility for participation in state-administered fund. The director may offer insurance advice and services to persons or entities other than state departments or agencies if:

A. The director has been authorized to do so by law;

B. The Governor has approved that person or entity for insurance advice and service;

C. Coverage is unavailable or is offered only at unreasonable cost to that person or entity; and

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2 D. That person or entity has demonstrated a strong public  
need for the services provided by that person or entity.

4 3. Interim coverage. The director may offer insurance  
advice and services for no more than 6 months when the Governor,  
6 in the absence of the Legislature, determines that it is  
appropriate to do so based on consideration of the risks involved  
8 and the governmental objectives served by that coverage.

10 4. Directed services. Notwithstanding the provisions of  
subsection 2, the director may provide insurance advice or  
12 services for family foster homes as defined in Title 22, section  
8101, subsection 3; respite care providers as defined in Title  
14 34-B, section 6201, subsection 2-A; and the Casco Bay Island  
Transit District created by Private and Special Law 1981, chapter  
16 22.

18 5. Capitalization of state-administered fund. The  
state-administered fund is capitalized by payments from persons  
20 or entities insured by the fund, by returned premiums or claims  
proceeds paid pursuant to terms of any insurance contract and by  
22 other means the Legislature approves. In establishing the  
initial capitalization of the state-administered fund, the  
24 Commissioner of Administrative and Financial Services may  
transfer from the self-insurance fund established by section 1731  
26 to the state-administered fund an amount that the commissioner  
determines to be the existing balance attributable to any risks  
28 formerly covered by the self-insurance fund that must be covered  
in the future by the state-administered fund. The commissioner  
30 shall deposit the state-administered fund with the Treasurer of  
State for investment. All proceeds of that investment accrue to  
32 the state-administered fund. The commissioner shall comply with  
applicable federal circulars and has the discretion to include  
34 public instrumentalities in the state-administered fund if the  
commissioner determines that the inclusion of these  
36 instrumentalities is necessary to allow the state-administered  
fund as a whole to offer insurance at affordable rates.

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

44 7. No expansion of liability under the Maine Tort Claims  
46 Act. The insurance advice and services provided by the  
state-administered fund do not expand the limits of liability or  
48 abrogate immunities contained in the Maine Tort Claims Act or any  
other state or federal law.

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2 8. Payments from state-administered fund. Pursuant to the  
3 recommendation of the director, the Commissioner of  
4 Administrative and Financial Services may cause payments from the  
5 state-administered fund or proceeds of insurance purchased in  
6 accordance with this section, or both, to be made available for  
7 repair or replacement of insured property and payment of losses  
8 and loss adjustment expenses. The rights of a person or entity  
9 insured under this section are limited to the extent specified in  
10 the contractual agreements or policies of insurance entered into  
11 between those persons or entities and the director and any  
12 involved insurance companies. Notwithstanding any contractual  
13 agreements or policies of insurance, persons or entities  
14 participating in the state-administered fund do not have a right  
15 of recovery except against the assets of the state-administered  
16 fund and do not have recourse against the General Fund, the  
17 assets of the State or the commissioner, the director or any  
18 other state employee. The commissioner shall establish  
19 procedures to ensure adequate disclosure of this limitation on  
20 rights of recovery to the entities insured under this section.'

21 Further amend the bill by inserting before the statement of  
22 fact the following:

23 'Sec. 10. Report. On or before January 1, 1994, the Bureau of  
24 General Services, the Bureau of Insurance, the Department of  
25 Human Services and the Department of Mental Health and Mental  
26 Retardation shall report to the Joint Standing Committee on  
27 Banking and Insurance on the availability and cost of insurance  
28 for residential child care facilities and specialized children's  
29 homes as defined in Title 22, section 8101.

### 30 FISCAL NOTE

31 This bill establishes a separate state-administered fund to  
32 provide insurance services to entities other than State  
33 departments and agencies. Since initial capitalization of this  
34 fund may be insufficient to cover a major insurance award,  
35 premium increases may be required. If these premium increases  
36 are significant the Departments of Human Services and Mental  
37 Health and Mental Retardation, who pay premiums on behalf of  
38 respite and foster care providers, may require General Fund  
39 appropriations.

40 The Risk Management Division within the Department of  
41 Administrative and Financial Services can absorb the costs to  
42 administer this additional fund and to arrange for periodic  
43 actuarial review of the fund within existing budgeted resources.

44 The Bureau of General Services, Bureau of Insurance and the  
45 Departments of Human Services and Mental Health and Mental  
46 Retardation can absorb the costs related to preparing a report to

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the Legislature related to insurance issues for residential child care facilities and specialized childrens' homes.'

STATEMENT OF FACT

This amendment clarifies language in the bill. It adds a report to the Joint Standing Committee on Banking and Insurance on or before January 1, 1994 from the Bureau of General Services, the Bureau of Insurance, the Department of Human Services and the Department of Mental Health and Retardation on the availability and cost of insurance for residential child care facilities and specialized children's homes as defined in Title 22, section 8101.

The amendment also adds a fiscal note to the bill.

Reported by the Committee on Banking and Insurance  
Reproduced and distributed under the direction of the Clerk of the House  
6/2/93 (Filing No. H-553)

COMMITTEE AMENDMENT