

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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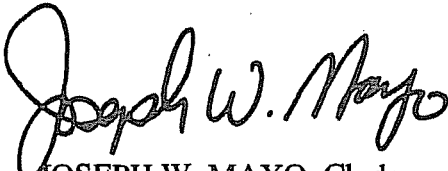
H.P. 1086

House of Representatives, May 6, 1993

**An Act to Amend Statutory Provisions Regarding Risk Management Funds.**

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Reference to the Committee on Banking and Insurance suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative CARLETON of Wells. (GOVERNOR'S BILL)  
Cosponsored by Senator: KIEFFER of Aroostook.

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

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

6       **§1728-A. Powers and duties of the director**

8           1. **Duties.** The director shall provide insurance advice and  
10 services for the State Government and any department or agency  
12 thereof of State Government or other entities designated as  
14 entitled to advice and services by the Legislature with the  
16 approval of the Governor for all forms of insurance, except for  
18 those departments or agencies and those types of insurance  
20 otherwise provided for by law. The director shall provide  
22 insurance advice and services ~~for family foster homes, as defined~~  
24 ~~in Title 22, to those persons or entities eligible for~~  
26 ~~participation in the state-administered fund as set forth in~~  
28 ~~section 8101, subsection 3, respite care providers, as defined in~~  
30 ~~Title 34-B, section 6201, subsection 2-A, the Caseo Bay Island~~  
32 ~~Transit District created by Private and Special Law 1981, chapter~~  
34 ~~22, and commercial applicators and spray contracting firms that~~  
36 ~~are required to provide proof of financial responsibility in~~  
38 ~~custom application pursuant to Title 22, section 1471-D,~~  
40 ~~subsection 4, and private applicators as defined in Title 22,~~  
42 ~~section 1471-C, subsection 22, who may be required to provide~~  
44 ~~proof of insurance 1737.~~ The director is responsible for the  
46 acquisition and administration of all insurance purchased by the  
48 State, including the authority to purchase, ~~on a competitive bid~~  
50 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 insurance protection in the  
operation of the State's insurance coverage program. In these  
regards, the director has the following duties:

38           A. To review annually the entire subject of insurance as it  
40 applies to all state property and activities and other  
42 persons pursuant to this section, and to provide to the  
44 ~~commissioner~~ Commissioner of Administrative and Financial  
46 Services a statement of its activities during the year  
48 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

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(4) Such other matters as the director determines to be appropriate and necessary or as the commissioner may request;

B. To recommend to the ~~commissioner~~ Commissioner of Administrative and Financial Services such insurance protection as the director may ~~deem~~ considers necessary or desirable for the protection of all state property or activities or other insureds under this section;

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

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

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

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

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

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

H. To administer the funds established by sections 1731 and 1737. In performing the functions authorized by this

2 chapter, the funds, the Commissioner of Administrative and  
3 Financial Services and the director are not subject to the  
4 provisions of Title 24-A; and

6 I. Every 3 years, to submit to the Commissioner of  
7 Administrative and Financial Services a report on the  
8 availability and affordability of insurance advice and  
9 services to those entities participating in the  
10 state-administered fund pursuant to section 1737 and to make  
11 specific recommendations for the removal from the  
12 state-administered fund of those entities that do not  
13 qualify. An entity participating in the self-insurance fund  
14 on the effective date of this paragraph may remain in the  
15 fund in which the entity is placed until the first actuarial  
16 review required by this section.

18 2. **Appraisal.** In case an agreement as to the amount of  
19 loss sustained to any building or property insured under this  
20 chapter cannot ~~can not~~ be arrived at between the state-agency  
21 claimant insured entity and the director, the loss shall must be  
22 referred to appraisal as provided ~~for-in~~ by Title 24-A, section  
23 3002.

24 3. **Rejection of risk.** In the event that the director  
25 determines that a risk may be prejudicial to the state's State's  
26 insurance program or to the state-administered fund established  
27 by section 1737 because of an actual or expected adverse loss  
28 ratio, he the director may refuse to include that risk in the  
29 program until such the time as that the hazards of the risk have  
30 been removed or ameliorated to a satisfactory degree.

32 When coverage is declined by the director, the department ~~ex,~~  
33 agency or entity in charge of the risk may request that the  
34 director procure separate insurance ~~thereon~~ from any authorized  
35 insurance company, and the premium ~~therefor shall be~~ for that  
36 separate insurance is a proper charge against the department ~~ex,~~  
37 agency or entity responsible for the property.

38 4. **Forms and rules.** The director may prescribe forms of  
39 policies, proofs of losses loss and other forms and ~~make-such~~ may  
40 adopt rules as ~~may-be~~ are necessary or expedient for the proper  
41 administration of this chapter.

44 5. **Actuarial review.** Once every 3 years, and more  
45 frequently if determined prudent by the Commissioner of  
46 Administrative and Financial Services, the director shall arrange  
47 for a review of the reserves of the state-administered fund by a  
48 qualified actuary who is a member in good standing of the  
49 Casualty Actuarial Society. The actuary shall issue an opinion  
50 on the adequacy of reserves of the state-administered fund to

2 cover the estimated ultimate liability of the state-administered  
3 fund. Costs for this service must be paid from the Risk  
4 Management Fund.

6 **Sec. 2. 5 MRSA §1731**, as amended by PL 1991, c. 591, Pt. III,  
7 §11, is further amended to read:

8 **§1731. Reserve fund for self-insured retention losses**

10 A reserve fund, referred to in this chapter called as the  
11 "fund," "self-insurance fund," is created to indemnify the State  
12 or the State's designated payee for self-insured retention losses  
13 and related loss adjustment expenses from those perils insured  
14 against under a deductible or self-insured retention program, as  
15 recommended by the director and approved by the ~~commissioner~~  
16 Commissioner of Administrative and Financial Services. With the  
17 approval of the commissioner, the self-insurance fund may be used  
18 for loss prevention programs administered by either the Risk  
19 Management-Division risk management division within the Bureau of  
20 General Services or the Bureau of Human Resources. The total  
21 amount of the self-insurance fund provided for loss prevention  
22 programs in any given year may not exceed 5% of the  
23 self-insurance fund as of July 1st of that fiscal year. The  
24 self-insurance fund is a continuing fund and may does not lapse.  
25 Funds provided from the ~~reserve~~ self-insurance fund to the Bureau  
26 of Human Resources are similarly nonlapsing and are carried  
27 forward through the Bureau of Human Resources' Dedicated Revenue  
28 Account.

30 As approved by the ~~commissioner~~ Commissioner of  
31 Administrative and Financial Services, up to ~~15%~~ 10% of the  
32 amount of the self-insurance fund as of July 1st of each fiscal  
33 year may be used to ensure the prompt payment of workers'  
34 compensation claims for state agencies as required by law. Any  
35 funds so transferred shall must be repaid to the self-insurance  
36 fund by use of a written agreement which that specifies  
37 reimbursement within the same biennium in which the transfer was  
38 made.

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

44 **Sec. 3. 5 MRSA §1731-A, first ¶**, as amended by PL 1989, c. 857,  
45 §21, is further amended to read:

46 Deductible or self-insured retention provisions hereunder  
47 may not exceed 25% of the self-insurance fund as of July 1st of  
48 the current fiscal year per occurrence with respect to any risk  
49 of loss.  
50

2           Sec. 4. 5 MRS §1732, as amended by PL 1991, c. 780, Pt. Y,  
3 §52, is further amended to read:

4           **§1732. Administration**

6           The self-insurance fund must be administered by the  
7 Commissioner of Administrative and Financial Services. The  
8 commissioner shall deposit the self-insurance fund with the  
9 Treasurer of State for investment. All proceeds of such that  
10 investment accrue to the self-insurance fund.

12           Sec. 5. 5 MRS §1733, as amended by PL 1989, c. 857, §22, is  
13 further amended to read:

14           **§1733. Capitalization of self-insurance fund**

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

20           ~~Appropriations--and--payments--to--the--fund--in--respect--to  
21 general--fund--departments--and--agencies--may--not--exceed--an--amount  
22 equal--to--the--difference--between--the--premium--for--insurance  
23 proposed--to--be--purchased--and--the--premium--for--mandatory--deductible  
24 or--full--insurance--coverage--plus--a--pro--rata--share--of--the--cost--of  
25 the--stop--loss--insurance.--In--any--instance--in--which--the--State--has--a  
26 100%--self--insured--retention,--the--premium--must--be--that--for--full  
27 insurance--coverage--adjusted--for--any--mandatory--deductible.~~

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

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

39           Sec. 6. 5 MRS §1734, as amended by PL 1983, c. 349, §16, is  
40 further amended to read:

41           **§1734. Self-insurance fund limitation**

42           The self-insurance fund shall may not exceed 2% of the then  
43 current value of all state-insured or self-insured retention

2 property protected by the self-insurance fund as determined by  
the director.

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

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

14 **Sec. 7. 5 MRSA §1735**, as amended by PL 1983, c. 349, §17, is  
further amended to read:

16 **§1735. Depletion of self-insurance fund**

18 In the event that payments from the self-insurance fund  
20 should reduce it below \$1,000,000, the ~~commissioner~~ Commissioner  
of Administrative and Financial Services shall recommend to the  
22 Legislature that funds be appropriated to restore the  
self-insurance fund up to the maximum amount it had previously  
24 attained.

26 **Sec. 8. 5 MRSA §1736**, as amended by PL 1989, c. 857, §23, is  
further amended to read:

28 **§1736. Payment of losses**

30 Pursuant to the recommendation of the director, the  
32 ~~commissioner~~ Commissioner of Administrative and Financial  
Services may cause payments from the self-insurance fund or  
34 proceeds of insurance purchased in accordance with this chapter,  
or both, to be made available for repair or replacement of  
36 insured property and payment of losses and loss adjustment  
expenses.

38 **Sec. 9. 5 MRSA §1737** is enacted to read:

40 **§1737. State-administered fund**

42 **1. Creation of state-administered fund.** A reserve fund,  
44 referred to in this chapter as the "state-administered fund," is  
created to indemnify persons and entities other than state  
46 departments or agencies eligible for participation in the  
state-administered fund for losses and related loss adjustment  
48 expenses from those perils insured against under a deductible or  
self-insured retention program as recommended by the director and  
50 approved by the Commissioner of Administrative and Financial



2 Services. With the approval of the commissioner, the  
4 state-administered fund may be used for loss prevention programs  
6 administered by the risk management division within the Bureau of  
8 General Services. The total amount of the state-administered  
10 fund provided for loss prevention programs in any given year may  
12 not exceed 5% of the state-administered fund as of July 1st of  
14 that fiscal year. The state-administered fund is a continuing  
16 fund and does not lapse.

10 **2. Eligibility for participation in state-administered**  
12 **fund.** The director may offer insurance advice and services to  
14 persons or entities other than state departments or agencies in  
16 those instances when the director is statutorily directed to do  
18 so. In order to be eligible for participation, insurance  
20 coverage must be unavailable or offered at an unreasonable cost.  
22 In addition, the entities must demonstrate a strong public need  
24 for the services they provide. The director may offer insurance  
26 advice and services, for no more than 6 months, in those  
28 instances when the Governor, in the absence of the Legislature,  
30 determines that it is appropriate to do so based on consideration  
32 of the risks involved and governmental objectives served by that  
34 coverage. The director may provide insurance advice or services  
36 for family foster homes, as defined in Title 22, section 8101,  
38 subsection 3; respite care providers, as defined in Title 34-B,  
40 section 6201, subsection 2-A; and the Casco Bay Island Transit  
42 District created by Private and Special Law 1981, chapter 22.

28 **3. Capitalization of state-administered fund.** The  
30 state-administered fund must be capitalized by payments from  
32 persons or entities insured by the fund, returned premiums or  
34 claims proceeds paid pursuant to terms of any insurance contract  
36 and by such other means as the Legislature approves. In  
38 establishing the initial capitalization of the state-administered  
40 fund, the Commissioner of Administrative and Financial Services  
42 may transfer from the self-insurance fund established by section  
44 1731 to the state-administered fund an amount that the  
46 commissioner determines to be the existing balance attributable  
48 to any risks formerly covered by the self-insurance fund that  
must 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. The  
commissioner shall comply with applicable federal circulars and  
has the discretion to include public instrumentalities in the  
state-administered fund if the commissioner determines that the  
inclusion of these instrumentalities is necessary to allow the  
state-administered fund as a whole to offer insurance at  
affordable rates.

