

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1578

S.P. 594

In Senate, June 21, 1995

**An Act to Create the Workers' Compensation Residual Market Deficit
Resolution and Recovery Act.**

(EMERGENCY)

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

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator KIEFFER of Aroostook. (GOVERNOR'S BILL).
Cosponsored by Representative MITCHELL of Vassalboro and
Senators: ABROMSON of Cumberland, McCORMICK of Kennebec, Representatives:
CAMPBELL of Holden, CARLETON of Wells, DONNELLY of Presque Isle, JACQUES of
Waterville, POULIOT of Lewiston, SAXL of Portland, VIGUE of Winslow, WHITCOMB of
Waldo.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** by October 1987, virtually all insurers filed and
had approved applications to withdraw from the Maine market, and
the system faced complete collapse; and

8
10 **Whereas,** the Legislature convened a special session in
October 1987, which ultimately resulted in the enactment of
12 emergency legislation that overhauled the Maine workers'
compensation system and included the so-called "Fresh Start" law,
14 the Maine Revised Statutes, Title 24-A, sections 2386 and
2386-A. In response to the enactment of the Fresh Start law a
16 core group of major insurers had formally rescinded their
withdrawals from the Maine workers' compensation market; and

18 **Whereas,** due to various forces beyond the Legislature's
control, the Fresh Start law did not resolve many of the major
20 problems at which the statute was aimed; and

22 **Whereas,** the Legislature created the Maine Employers Mutual
Insurance Company, or "MEMIC," to oversee and operate the
24 workers' compensation residual market in the State as of January
1, 1993, and workers' compensation rates in this State have
26 decreased in each of the last 2 years, largely due to MEMIC's
effectiveness; and

28
30 **Whereas,** the "Fresh Start" statute requires the
Superintendent of Insurance to adopt rules establishing a plan of
operation for the residual market mechanism to govern the
32 operation of the State's workers' compensation insurance residual
market; and

34
36 **Whereas,** the Superintendent of Insurance in bureau rules
promulgated the "Plan of Operation for the Workers' Compensation
Residual Market Mechanism," pursuant to which a residual market
38 pool was created to collect funds and pay obligations of the
residual market mechanism; and

40
42 **Whereas,** the residual market mechanism wrote workers'
compensation insurance policies through participating insurers
during the period January 1, 1988 to December 31, 1992, ceased
44 writing new business as of December 31, 1992, and now conducts
only operations limited to running off business written during
46 that period; and

48 **Whereas,** the workers' compensation residual market in the
State has generated substantial funding deficits and is projected
50 to experience cash inadequacies that could render the residual

market pool incapable of satisfying its obligations as they
become due; and

Whereas, disputes concerning the operation of the residual market mechanism and the funding of residual market pool deficits have resulted in extensive and protracted litigation involving the Bureau of Insurance, employer representative groups, the Board of Governors of the residual market pool and many significant workers' compensation insurers in the State; and

Whereas, the current and continued operation of the residual market mechanism under existing law will hamper economic growth and development in the State by placing a substantial and undue financial burden on Maine employers, the residual market pool, the Bureau of Insurance and the former and current workers' compensation insurers, thereby fostering and perpetuating litigation and attendant uncertainty within the State; and

Whereas, a new funding scheme is necessary to enable the residual market pool to satisfy outstanding, ongoing and future obligations and to remove the financial burden and uncertainty attributable to the current and continued operation of the residual market mechanism; and

Whereas, the residual market mechanism must be modified in certain respects to provide for more efficient and cost-effective operations; and

Whereas, under certain circumstances it may be appropriate and beneficial that the workers' compensation residual market mechanism receive assistance in borrowing to meet its obligations; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 10 MRSA §963-A, sub-§10, ¶N, as amended by PL 1995, c. 4, §1, is further amended to read:

N. Any electric rate stabilization project; ~~e~~

Sec. 2. 10 MRSA §963-A, sub-§10, ¶O, as enacted by PL 1995, c. 4, §1, is amended to read:

O. Any major business expansion project; ~~r~~; or

2 **Sec. 3. 10 MRSA §963-A, sub-§10, ¶P** is enacted to read:

4 P. Any workers' compensation residual market mechanism
6 project.

8 **Sec. 4. 10 MRSA §963-A, sub-§52-A** is enacted to read:

10 **52-A. Workers' compensation residual market mechanism**
12 **project.** "Workers' compensation residual market mechanism
14 project" means a loan or loans requested by the Board of
16 Governors of the Maine Workers' Compensation Residual Market Pool
18 pursuant to Title 24-A, section 2395, subsection 5.

20 **Sec. 5. 10 MRSA §1041, sub-§19** is enacted to read:

22 **19. Workers' compensation residual market mechanism**
24 **projects.** Provide loans for workers' compensation residual
26 market mechanism projects, if the authority determines that the
28 financing requested by the workers' compensation residual market
30 pool is a reasonable and prudent extension of credit. Revenue
32 obligation securities secured by capital reserve funds pursuant
34 to section 1053 relating to any loan authorized by this section
36 are limited obligations of the authority payable from revenues
38 from the workers' compensation residual market pool and any
40 capital reserve funds pledged for those securities and are not
42 payable from any other assets or funds of the authority.

44 **Sec. 6. 10 MRSA §1053, sub-§6,** as amended by PL 1995, c. 120,
46 §1, is repealed and the following enacted in its place:

48 **6. Securities outstanding.** The authority may not have at
50 any one time outstanding revenue obligation securities to which
52 subsection 5 is stated in the trust agreement or other document
54 to apply in principal amount exceeding an amount equal to
56 \$150,000,000 less the aggregate outstanding balance of mortgage
58 loans secured by capital reserve funds pursuant to section 1032.
60 Notwithstanding any other provision of this subsection, the
62 authority may additionally have outstanding at any one time:

64 A. Bonds under this subchapter relating to loans for
66 electric rate stabilization projects, in the amount of
68 \$264,000,000 consisting of not more than \$220,000,000 for
70 loans and up to \$44,000,000 for use of bond proceeds to fund
72 capital reserve funds;

74 B. Bonds under this subchapter relating to loans for major
76 business expansion projects, in the amount of \$120,000,000
78 consisting of not more than \$100,000,000 for loans and up to
80 \$20,000,000 for use of bond proceeds to fund capital reserve
82 funds; and

2 C. Bonds under this subchapter relating to workers'
4 compensation residual market mechanism projects, in the
6 amount of \$57,000,000 consisting of not more than
 \$45,000,000 for loans and up to \$12,000,000 for use of bond
 process to fund capital reserve funds.

8 The amount of revenue obligation securities issued to refund
10 securities previously issued may not be taken into account in
12 determining the principal amount of securities outstanding,
14 provided that proceeds of the refunding securities are applied as
16 promptly as possible to the refunding of the previously issued
18 securities. In computing the total amount of revenue obligation
 securities of the authority that may at any time be outstanding
 for any purpose, the amounts of the outstanding revenue
 obligation securities that have been issued as capital
 appreciation bonds or as similar instruments are valued as of any
 date of calculation at their then current accreted value rather
 than their face value.

20 **Sec. 7. 24-A MRS §2386, sub-§2,** as enacted by PL 1991, c.
22 885, Pt. B, §12 and affected by §13, is repealed.

24 **Sec. 8. 24-A MRS §2386, sub-§5,** as amended by PL 1993, c.
26 364, §1, is further amended to read:

28 **5. Plan of operation.** The superintendent shall adopt rules
30 pursuant to Title 5, chapter 375, subchapter II, establishing a
32 plan of operation for the residual market mechanism. ~~The plan of
34 operation must contain those terms that the superintendent in the
36 superintendent's discretion determines necessary.~~

38 A. The plan must include an experience rating system and
40 merit rating plan providing that the premium of each
42 employer in the account is modified either prospectively or
44 retrospectively. An experience modification may only be
46 applied to the manual rate of the plan. The sensitivity of
48 a rating system may vary by size of the risk involved.

50 B. The plan must include a procedure to handle appeals
 filed pursuant to former Title 39, section 106, subsection
 2, paragraph B.

 C. The plan must provide for premium surcharges for
 employers in the Accident Prevention Account based on their
 specific loss experience within a specified period or other
 factors that are reasonably related to their risk of loss.

 (1) No premium surcharge may be applied to a risk
 whose threshold loss ratio is less than 1.0. The

2 threshold loss ratio is based on the ratio of "L" to
"P" where:

4 (a) "L" is the actual incurred losses of a risk
6 during the previous 3-year experience period as
8 reported, except that the largest single loss
during the 3-year period is limited to the amount
of premium charged for the year in which the loss
occurred; and

10 (b) "P" is the premium charged to a risk during
12 that 3-year period.

14 (2) Premium surcharges apply to a premium that is
experience or merit rating modified.

16 (3) Premium surcharges are based on an insured's
18 adverse deviation from expected incurred losses in the
State. The surcharge is based on the ratio of "A" to
20 "B" where:

22 (a) "A" is the actual incurred losses of a risk
24 during the previous 3-year experience period as
reported; and

26 (b) "B" is the expected incurred losses of a risk
28 during that period as calculated under the uniform
experience or merit rating plan multiplied by the
30 risk's current experience or merit rating
modification factor.

32 (4) The premium surcharge is as follows:

34 Ratio of "A" to "B"	Surcharge
36 Less than 1.20	None
38 1.20 or greater, but less than 1.30	5%
1.30 or greater, but less than 1.40	10%
40 1.40 or greater, but less than 1.50	15%
1.50 or greater	20%

42 D. Commissions under a plan must be established at a level
44 that is neither an incentive nor a disincentive to place an
employer in the residual market.

46 E. In addition to factors in paragraphs A to C, any
48 servicing contract must be approved on the basis of
acceptable price and performance.

50 F. If after notice and hearing the superintendent

2 determines that insurers are unwilling to provide services
3 that are reasonably necessary for the operation of the plan,
4 the superintendent may award service contracts within
5 various areas of the State on the basis of acceptable price
6 and performance. If the superintendent chooses to award
7 such contracts, the specifications must give special
8 consideration to loss control, safety engineering and any
9 other factor that affects safety.

10 G. Beginning July 1, 1993, the plan must provide for a
11 board of governors, which shall control the affairs and
12 business of the residual market mechanism. The board of
13 governors must be composed of 9 members, 5 of whom represent
14 the business community of the State and 4 of whom represent
15 insurers that are members of the residual market mechanism.
16 The superintendent shall adopt rules to carry out the
17 purposes of this paragraph.

18 (1) The representatives of insurers on the board of
19 governors are elected by the membership at the annual
20 meeting of the residual market mechanism for staggered
21 terms of 3 years, with the first appointments of one
22 member for one year, one member for 2 years and 2
23 members for 3 years. An insurer or a group of insurers
24 under common ownership, management or control may not
25 be represented by more than one person on the board of
26 governors.

27 ~~(2) The business community members of the board of~~
28 ~~governors are appointed by the superintendent for~~
29 ~~staggered terms of 3 years, with the first appointments~~
30 ~~of one member for one year, 2 members for 2 years and 2~~
31 ~~members for 3 years.~~

32 **Sec. 9. 24-A MRSA §2386, sub-§§10, 11, 12 and 15,** as enacted by
33 PL 1991, c. 885, Pt. B, §12 and affected by §13, are repealed.

34 **Sec. 10. 24-A MRSA §2386-A,** as corrected by RR 1993, c. 1,
35 §59, is repealed.

36 **Sec. 11. 24-A MRSA c. 26** is enacted to read:

37 **CHAPTER 26**

38 **THE WORKERS' COMPENSATION RESIDUAL MARKET DEFICIT**
39 **RESOLUTION AND RECOVERY ACT**

40 **§2391. Title and scope of chapter**

41 **1. Title.** This chapter may be known and cited as "The

2 Workers' Compensation Residual Market Deficit Resolution and
3 Recovery Act."

4 2. Scope. This chapter establishes an efficient and
5 effective mechanism for funding the obligations of the residual
6 market mechanism in the State arising from workers' compensation
7 insurance policies with initial effective dates or renewal dates
8 between January 1, 1988 and December 31, 1992.

10 **§2392. Definitions**

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

14 1. Association. "Association" means the Maine Insurance
15 Guaranty Association.

16 2. Board. "Board" means the governing board of the Maine
17 Workers' Compensation Residual Market Pool.

18 3. Chapter 250. "Chapter 250" means Bureau of Insurance
19 Rules, Chapter 250, "Requirements for Eligibility to Self-Insurer
20 Workers' Compensation Benefits," as amended and as in existence
21 prior to the effective date of this chapter.

22 4. Chapter 440. "Chapter 440" means Bureau of Insurance
23 Rules, Chapter 440, "Plan of Operation for the Workers'
24 Compensation Residual Market Mechanism," as amended, as in
25 existence prior to the effective date of this chapter and as
26 modified in this chapter.

27 5. Delinquent insurer. "Delinquent insurer" means an
28 insurer that has not timely paid in full that insurer's allocated
29 share pursuant to section 2393, subsection 1, paragraph A,
30 subparagraphs (1) or (2) or section 2393, subsection 1, paragraph
31 B, subparagraphs (1) to (5), except as provided in section 2393,
32 subsection 1, paragraph A, subparagraph (3), division (d) and
33 section 2393, subsection 1, paragraph B, subparagraph (6),
34 division (d).

35 6. Employer. "Employer" means any employer in the State
36 that, at any time relevant under this chapter, is required under
37 the Workers' Compensation Act to secure workers' compensation
38 benefits for its employees.

39 7. Expense constant. "Expense constant" means a premium
40 charge approved by the superintendent that applies to every
41 policy, in addition to other premium charges, covering expenses
42 such as those for issuing, recording and auditing that are common
43 to all workers' compensation policies regardless of premium size.
44

2 **8. Fresh start period.** "Fresh start period" means the
period from January 1, 1988 to December 31, 1992.

4 **9. Initial surcharge period.** "Initial surcharge period"
6 means the period from July 1, 1995 to June 30, 2003.

8 **10. Insured employer.** "Insured employer" means an employer
10 in the State that, on or after July 1, 1995, secures or continues
to secure workers' compensation benefits under the Workers'
12 Compensation Act for its employees through the purchase of an
insurance policy.

14 **11. Insurer.** "Insurer" means every insurer or group of
affiliated insurers authorized to provide workers' compensation
16 insurance in the State at any time during the fresh start
period. For purposes of this chapter, a group of affiliated
18 companies under common ownership, management or control is
treated as one entity.

20 **12. Large deductible policy.** "Large deductible policy"
22 means a workers' compensation policy written with a per
occurrence deductible in excess of \$5,000 or a medical deductible
24 in excess of \$500.

26 **13. Major insurer.** "Major insurer" means any insurer that
was designated by the superintendent as a servicing carrier in
28 the workers' compensation residual market in the State as of
October 1, 1986.

30 **14. Minor insurer.** "Minor insurer" means any insurer other
32 than a major insurer.

34 **15. Net direct written premium.** "Net direct written
premium" means the Maine direct gross premiums charged less all
36 return premiums, except dividends and savings refunded under
participating policies, returned to policyholders for all
38 Workers' Compensation and Occupational Disease Insurance written
in this State. Excess workers' compensation insurance is not
40 considered "net direct written premium."

42 **16. Net present value.** "Net present value" is the sum of
future payments, discounted to a specified valuation date at the
44 discount rate provided.

46 **17. Plan year.** "Plan year" means, for an employer, the
period beginning on the self-insured employer's plan approval or
48 renewal date and ending the day before the next plan renewal or
anniversary date. The plan renewal date for a member of a group
self-insurer is the group's plan renewal date; the plan approval
50

2 date for a new member joining an established group is the
3 effective date of group membership. The plan year may be less
4 than 12 months as a result of changes in plan accounting periods,
5 midyear entry into a group self-insurance plan or termination of
6 self-insurance authorization.

8 **18. Policy year.** "Policy year" means the following:

10 A. With respect to a particular calendar year, all policies
11 issued or renewed in that calendar year and all subsequent
12 events occurring in later years relating to those policies,
13 including premium adjustments, audit results and claims
14 experience under those policies; and

16 B. With respect to a particular employer, the 12-month
17 period beginning upon the date of issuance or renewal of a
18 policy and ending the day before the next renewal date and
19 all subsequent events occurring in later years relating to
20 those policies, including premium adjustments, audit results
21 and claims experience under that policy.

22 **19. Pool.** "Pool" means the Maine Workers' Compensation
23 Residual Market Pool described in and governed by chapter 440.

24 **20. Residual market.** "Residual market" means the
25 instrument to provide coverage to employers not able to obtain
26 coverage in the voluntary market.

28 **21. Self-insured employer.** "Self-insured employer" means
29 an employer that, on or after July 1, 1995, secures or continues
30 to secure workers' compensation through a self-insured program
31 under the Workers' Compensation Act as approved by the
32 superintendent pursuant to the provisions of Title 39-A, section
33 403, subsection 3.

36 **22. Self-insured group or groups.** "Self-insured group or
37 groups" means a self-insured group approved by the superintendent
38 pursuant to chapter 250, section 3.

40 **23. Superintendent.** "Superintendent" means the
41 Superintendent of Insurance.

42 **24. Surchargeable premium.** "Surchargeable premium" means:

44 A. For insured employers, the manual workers' compensation
45 premium applicable to the insured employer, as adjusted by
46 any applicable experience modification factor, premium
47 discount, expense constant and any other debits or credits
48 to a lawfully received premium. In calculating the
49 surchargeable premium for retrospectively rated policies and
50 the

2 large deductible policies, "surchargeable premium" means the
3 discounted workers' compensation standard premium, which is
4 the manual premium that would apply to the insured employer
5 absent the retrospectively rated or large deductible nature
6 of the policy, as adjusted by any applicable experience
7 modification factor, premium discount and expense constant.
8 For retrospectively rated and large deductible policies, the
9 insurer shall calculate a discounted standard premium amount
10 utilizing estimated payrolls at policy inception, subject to
11 the final determination upon audit, applying the insurer's
12 manual rates, the insured's experience modification factor,
13 any premium discount, expense constant and other debits or
14 credits to a lawfully received premium. When calculating
15 the discounted standard premium for policies with large
16 deductibles, the maximum credit for the deductible option
17 may not be greater than the amount approved by the
18 superintendent in the most recent advisory loss cost filing
19 for a \$5,000 indemnity deductible.

20 B. For self-insured employers, the manual workers'
21 compensation premium adjusted by the experience modification
22 factor applicable to the self-insured employer, and any
23 applicable premium discount and expense constant. For
24 purposes of this definition, "manual premium" means the
25 workers' compensation premium that would have been
26 applicable to the individual self-insured employer if
27 calculated using the advisory loss costs in effect at the
28 time the surcharge is due multiplied by 1.2, applying the
29 rating rules, excluding any premium discount, and experience
30 rating procedure approved by the superintendent for the
31 designated workers' compensation advisory organization
32 pursuant to section 2382-B, to the exposure and experience
33 of the individual self-insured employer. For a self-insured
34 employer who is a member of a self-insurance group,
35 "surchargeable premium means" the actual amount of workers'
36 compensation premium that is paid to the self-insurance
37 group including experience modification, premium discount
38 and expense constant in accordance with the requirements of
39 chapter 250, but excluding any surplus distributions
40 credited against or applied to reduce premiums.

41 25. **Timely pay; timely paid; timely payment.** "Timely pay,"
42 "timely paid" or "timely payment" means payment by the party
43 responsible for the payments on or before the due date specified
44 in this chapter.

45 26. **Voluntary market.** "Voluntary market" means the
46 workers' compensation insurance market in which insurance
47 companies voluntarily offer coverage to applicants who meet the
48 insurers' underwriting standards or guidelines.
49

2 27 Workers' Compensation Act. "Workers' Compensation Act"
means and refers to the Maine Workers' Compensation Act of 1992,
4 as amended.

6 28. Worker's compensation residual market mechanism.
"Worker's compensation residual market mechanism" or "residual
8 market mechanism" means the workers' compensation residual market
mechanism described in and governed by Chapter 440.

10 §2393. Initial funding of pool

12 1. Payments by insurers. Insurers shall pay to the pool on
14 or before January 1, 1996 the amount of \$65,000,000, as follows.

16 A. Major insurers shall pay to the pool 90% of the
\$65,000,000 payment, which is \$58,500,000. Each major
18 insurer shall pay to the pool that major insurer's allocated
share of the payment required by this paragraph as
20 determined in accordance with the following:

22 (1) If the major insurer's percentage of the total net
direct written premium in the voluntary workers'
24 compensation market in the State for the calendar years
1989 and 1990 was less than 3.4% according to data
26 compiled by the National Council on Compensation
Insurance, then the major insurer must pay to the pool
28 \$4,906,000;

30 (2) If the major insurer's percentage of the total net
direct written premium in the voluntary workers'
32 compensation market in the State for the calendar years
1989 and 1990 was equal to or greater than 3.4%,
34 according to data compiled by the National Council on
Compensation Insurance, then the major insurer must pay
36 \$4,906,000 less one of the following credits:

38 (a) If the major insurer's percentage of total
net direct written premium in the voluntary market
40 exceeded 25% for each of the calendar years 1989
and 1990, then \$1,811,000;

42 (b) If the major insurer's percentage of total
net direct written premium in the voluntary market
44 exceeded 10% for each of the calendar years 1989
and 1990, then \$1,772,000;

46 (c) If the major insurer's percentage of total
net direct written premium in the voluntary market
48 exceeded 10% for either calendar year 1989 or
50 1990, then \$807,000;

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(d) If the major insurer's percentage of total net direct written premium in the voluntary market exceeded 7.5% for each of the calendar years 1989 and 1990, then \$596,000; or

(e) For any other major insurer that qualifies for credit under this subparagraph, \$289,000;

(3) One or more major insurers may agree in writing to pay more or less than the amount of their allocated share under subparagraph (1) or (2); except that:

(a) A major insurer may not pay less than the allocated share under subparagraph (1) or (2), unless the written agreement is executed by all major insurers that have timely paid or agreed in writing to timely pay in full at least their allocated share;

(b) The total amount of timely payments to the pool by major insurers is equal to or greater than \$58,500,000; and

(c) The pool is made a 3rd-party beneficiary to a written agreement among certain major insurers that provides for:

(i) Timely payments to the pool by major insurers that are equal to \$58,500,000; and

(ii) An express right of the pool to enforce the payments required by that agreement; and

(d) Timely payment of any share agreed upon in writing pursuant to this subparagraph in an amount less than the allocated share under subparagraph (1) or (2) constitutes timely payment in full of an allocated share for purposes only of subsection 1, paragraph C or section 2396, subsection 1.

(4) If the total amount paid according to the requirements of subparagraphs (1), (2) and (3) exceeds \$58,500,000, the pool must disburse within 30 days the excess amount by refunding to each major insurer that has timely paid in full at least its allocated share under subparagraph (1) or (2) in direct proportion to the amount that each major insurer paid to the pool as part of the total major insurers' payment required by this paragraph.

2 B. Minor insurers shall pay to the pool 10% of the
3 \$65,000,000 payment, which is \$6,500,000. Each minor
4 insurer shall pay to the pool an allocated share of the
5 payment required by this paragraph as determined in
6 accordance with the following.

8 (1) Except as provided in subparagraph (2), an
9 allocated share equal to the sum of the amounts
10 described in divisions (a) to (c) must be paid to the
11 pool.

12 (a) Minor insurers authorized to provide workers'
13 compensation insurance in the State at any time
14 during 1989 pay 59% of the \$6,500,000 payment,
15 with each minor insurer paying a per capita share.

16 (b) Minor insurers authorized to provide workers'
17 compensation insurance in the State at any time
18 during 1990 pay 38% of the \$6,500,000 payment,
19 with each minor insurer paying a per capita share.

20 (c) Minor insurers authorized to provide workers'
21 compensation insurance in the State at any time
22 during 1991 pay 3% of the \$6,500,000 payment, with
23 each minor insurer paying a per capita share.

24 (2) A minor insurer that qualifies for a partial
25 exemption under this subparagraph shall pay to the pool
26 the greater of \$10,000 or 2% of the minor insurer's
27 average annual after-tax adjusted earnings for the 3
28 calendar years immediately prior to enactment of this
29 chapter as reported in the minor insurer's annual
30 statement filed with the superintendent. A minor
31 insurer qualifies for a partial exemption from the per
32 capita share payment required by this paragraph if, for
33 the 3 calendar years immediately prior to enactment of
34 this chapter, as reported in the minor insurer's annual
35 statement filed with the superintendent, the minor
36 insurer's:

37 (a) Average annual after-tax adjusted earnings
38 were less than \$2 million; and

39 (b) Surplus as to policyholders did not exceed
40 \$12,500,000.

41 (3) A minor insurer that has not received a partial
42 exemption under subparagraph (2) is entitled to
43 participation credits determined as follows.

2 (a) For any policy year beginning on or after
4 January 1, 1989, the share for each minor insurer
6 authorized to write workers' compensation
8 insurance in the year to which the calculation in
10 this division pertains is reduced by .05% for each
12 .10% that its participation ratio for the year to
14 which the assessment relates exceeds its
16 participation ratio for the base period as
18 calculated by dividing the minor insurer's net
20 direct written premium for the base period by the
 total minor insurer's net direct written premium
 for the base period. For purposes of this
 division, "base period" means the calendar years
 1983 to 1986. The participation ratio for the
 year to which the assessment relates is calculated
 by dividing the minor insurer's net direct written
 premium in that calendar year by the total net
 direct written premium of minor insurers that were
 authorized at any time during that year;

22 (b) Credits earned by a minor insurer may not
24 result in a minor insurer's participation ratio
26 being adjusted to less than 1/2 of its otherwise
 allocated share;

28 (c) For a minor insurer not authorized to write
30 workers' compensation insurance in 1986, its
32 adjusted participation ratio is 1/2 of its
 participation ratio in the year to which the
 calculation applies;

34 (d) Any deficiency must be distributed among all
36 minor insurers in proportion to the adjusted
 participation ratio, after credit adjustments; and

38 (e) For purposes of this subparagraph, "adjusted
40 participation ratio" means a minor insurer's
42 participation ratio as calculated in accordance
44 with this subparagraph and after application of
46 any credits. For purposes of this subparagraph,
 net direct written premium does not include
 premiums for residual market risks reinsured by
 the pool or retrospective rating plan adjustments
 on policies effective prior to January 1, 1988.

48 (4) The total amount of the differences between the
50 following must be paid by those minor insurers that
 actually paid their allocated share as of January 1,
 1996 by allocating the difference to those minor

2 insurers in the same proportion as each such minor
3 insurer's payment bears to the total aggregate amount
4 actually paid by minor insurers as of January 1, 1996:

5 (a) The otherwise allocated share payments under
6 subparagraph (1); and

7 (b) The payments made by minor insurers that
8 qualify for a partial exemption as provided in
9 subparagraph (2) and any participation credits
10 under subparagraph (3).

11 (5) In the event a minor insurer for any reason fails
12 to pay its allocated share, as described in this
13 paragraph, by January 1, 1996, then the pool may charge
14 the deficiency resulting from those uncollected amounts
15 to all minor insurers that actually pay their allocated
16 share as of January 1, 1996 by allocating that
17 deficiency to those minor insurers in the same
18 proportion as each such minor insurer's payment bears
19 to the total aggregate amount actually paid by minor
20 insurers as of January 1, 1996. Those minor insurers
21 are subrogated to the pool's right to collect such
22 amounts from the delinquent minor insurer.

23 (6) One or more minor insurers may agree in writing to
24 pay more or less than the amount of their allocated
25 share under subparagraphs (1) to (4), except that:

26 (a) A minor insurer may not pay less than the
27 allocated shares under subparagraphs (1) to (4)
28 unless the written agreement is executed by all
29 minor insurers that have timely paid or agreed in
30 writing to timely pay in full at least their
31 allocated share;

32 (b) The total amount of timely payments to the
33 pool by minor insurers is equal to or greater than
34 \$6,500,000;

35 (c) The pool is made a 3rd-party beneficiary to a
36 written agreement among certain minor insurers
37 that provides for:

38 (i) Timely payments to the pool by minor
39 insurers that are equal to \$6,500,000; and

40 (ii) An express right of the pool to enforce
41 the payments required by that agreement; and
42

2 (d) Timely payment of any share agreed upon in
3 writing pursuant to this subparagraph in an amount
4 less than the allocated share under subparagraphs
5 (1) or (2) constitutes timely payment in full of
6 an allocated share for purposes only of subsection
7 1, paragraph C or section 2396, subsection 1.

8 (7) If the total amount paid according to the
9 requirements of subparagraphs (1) to (6) exceeds
10 \$6,500,000, the pool must disburse within 30 days the
11 excess amount by refunding to each minor insurer that
12 has timely paid in full at least its allocated share
13 under subparagraphs (1) to (4) in direct proportion to
14 the amount that each minor insurer paid to the pool as
15 part of the total minor insurers' payment required by
16 this paragraph.

17 C. The pool shall bill and collect from each insurer the
18 allocated share established by paragraphs A and B. If an
19 insurer has not timely paid its allocated share in full to
20 the pool on or before January 1, 1996, then the insurer is
21 considered delinquent and the following applies.
22

23 (1) The pool has all the rights, powers and authority
24 to take all necessary and appropriate action, as
25 determined in the pool's discretion, against the
26 delinquent insurer to collect any amounts not paid as
27 and when due, and any deficiency is assessed interest
28 at the rate of 10% per annum from January 1, 1996 until
29 full payment from the insurer is received by the pool.
30 The pool is entitled to an award of and reimbursement
31 from any delinquent insurer of the costs of enforcement
32 and collection of any amounts not paid as and when due,
33 including all costs and expenses, reasonable attorney's
34 and paralegal's fees and any other professional fees
35 and expenses associated with the pool's enforcement and
36 collection efforts.

37 (2) If the pool has received \$58,500,000 from major
38 insurers or \$6,500,000 from minor insurers, valued as
39 of January 1, 1996, the pool shall provide prompt
40 written notice of this fact to insurers in the same
41 category, either major or minor. Within 90 days
42 following a request, the pool shall assign all such
43 rights, powers and authority, including the entitlement
44 to costs and expenses, to any insurers in the same
45 category of the delinquent insurer that have requested
46 an assignment and timely paid in full at least the
47 allocated share established by paragraphs A and B.
48

2 (3) The pool has the right to set off any amounts due
4 under this chapter to the pool from a delinquent
6 insurer against any sums credited by or due from the
 pool to the delinquent insurer and against any other
 property of the delinquent insurer in the possession or
 under the control of the pool.

8
10 (4) Regardless of whether any action is taken pursuant
12 to subparagraphs (1) to (3), the superintendent is
14 authorized to exercise all authority as may be provided
16 by and in accordance with law to take appropriate
18 action against any delinquent insurer. In addition to
20 any other authority the superintendent may possess
22 under law, the superintendent upon notice and hearing
 may suspend a delinquent insurer's authority to
 transact the business of insurance in the State for so
 long as the insurer remains delinquent. The authority
 granted to the superintendent under this paragraph and
 jurisdiction vested in the bureau are concurrent with
 other actions by other parties authorized in this
 paragraph.

24 (5) Any collection by or on behalf of the pool, or
26 amounts obtained by setoff with respect to a delinquent
28 insurer, are retained by the pool, until the insurers
30 in the same category as the delinquent insurer have
32 paid the total amount required for that category, plus
34 interest pursuant to subparagraph (1) and costs and
36 expenses of the pool for collection in an amount not to
38 exceed the delinquent share, valued as of January 1,
40 1996, to the pool. Any excess must be distributed
 within 90 days among the insurers in the same category
 as the delinquent insurer that have timely paid in full
 at least the allocated share established by paragraphs
 A and B in direct proportion to that insurer's payment
 to the pool as part of the total payments required by
 paragraph A or B, except that any collection on behalf
 of the pool as the result of an assignment pursuant to
 subparagraph (2) must be distributed as agreed among
 the insurers that receive the assignment from the pool.

42
44 (6) No defense or substantive argument that could have
46 been raised or asserted related to an insurer's status
48 as a major insurer or minor insurer or any purported
 contractual rights under prior or existing law is
 extinguished or otherwise abridged in any proceeding
 against a delinquent insurer instituted under
 subparagraphs (1) to (5).

2 2. Payments by employers. Employers shall pay to the pool
3 the following amounts.

4
5 A. Employers shall pay initial surcharges, in the manner
6 described in this subsection, in an aggregate amount equal
7 to \$110,000,000, calculated on a net present value basis
8 using January 1, 1995 as the valuation date, a discount rate
9 of 5% and the midpoint of each calendar quarter as the date
10 of actual receipt of surcharge proceeds remitted to the pool
11 for each calendar quarter. Proceeds included in determining
12 when the \$110,000,000 initial surcharge is fully paid
13 consist of:

14 (1) All proceeds from surcharges under this chapter on
15 policies with effective dates on or after July 1, 1995
16 and surcharges under this chapter on self-insured
17 employers with plan years commencing on or after July
18 1, 1995; and

19 (2) All proceeds from surcharges actually received in
20 immediately available funds by the pool after 5:00
21 p.m., September 30, 1995, whether the proceeds result
22 from a surcharge under this chapter or under laws
23 existing prior to enactment of this chapter.

24
25 B. Proceeds from surcharges under existing laws actually
26 received in immediately available funds by the pool on or
27 before 5:00 p.m., September 30, 1995 may not be credited
28 against the initial surcharge requirement.

29 C. The pool shall maintain records reflecting actual dates
30 of receipt of proceeds from surcharges sufficient to enable
31 the net present value calculation.

32 D. The initial surcharges must be paid in accordance with
33 the following provisions.

34 (1) Beginning July 1, 1995 every insurer writing
35 workers' compensation insurance in the State shall
36 collect from workers' compensation insurance
37 policyholders and pay to the pool a surcharge on all
38 surchargeable premiums received by the insurer for
39 those policies. During the initial surcharge period,
40 the surcharge is at a fixed rate of 6.32% of the
41 surchargeable premium. The surcharge may be applied
42 only to policies with an effective date on or after
43 12:01 a.m., July 1, 1995. All surcharges received by
44 each insurer during the preceding calendar quarter must
45 be remitted to the pool within 15 days following the
46 end of the calendar quarter.

2 end of each calendar quarter, except that servicing
3 carriers shall remit on February 15th, May 15th, August
4 15th and November 15th of each year. Any surcharge
5 proceeds not remitted on a timely basis accrue interest
6 at the rate of 10% per annum from the due date until
7 paid in full. The pool is entitled to reimbursement
8 from any insurer failing to remit surcharge proceeds on
9 a timely basis for the pool's costs of collection of
10 those amounts, including all collection costs and fees,
11 reasonable attorney's and paralegal's fees and any
12 other professional fees and expenses associated with
13 the pool's collection efforts. The surcharges
14 described in this subparagraph do not apply to
15 reinsurance recognized by the superintendent pursuant
16 to chapter 250, section 2, paragraph G or section 3,
17 paragraph G, procured by an individual self-insured
18 employer or a self-insured employer group.

19 (2) Self-insured employers that secured their
20 obligation to provide workers' compensation benefits
21 under the Workers' Compensation Act through issuance or
22 renewal at any point during the fresh start period of
23 an insurance policy for any portion of any of the
24 policy years 1988 to 1992 are subject to a surcharge as
25 provided in the following.

26 (a) During the initial surcharge period the rate
27 of surcharge is 6.32% of the surchargeable premium
28 as adjusted pursuant to this paragraph for the
29 self-insured employer's current plan year
30 utilizing estimated payroll as submitted with the
31 self-insured employer's renewal application for
32 authority to self-insure, in accordance with
33 Chapter 250, section 2, paragraph C, subparagraph
34 1, division c or Chapter 250, section 3, paragraph
35 C, subparagraph 1, division g as applicable,
36 subject to audit pursuant to division (d),
37 subdivision (iii). If the plan year in which a
38 surcharge is collected or a credit is distributed
39 is shorter than 12 months, due to a change in
40 accounting period or termination of self-insurance
41 authorization, the surcharge or credit for that
42 plan year must be based upon the final audited
43 payroll for the short plan year.

44 (b) All surcharges must be collected or
45 distributed on a plan year basis. In each plan
46 year, the percentage of the surchargeable premium
47 to be surcharged is the same percentage as is
48 applied to an insured employer whose policy period
49 coincided with the plan year.

2 (c) Each self-insured employer shall pay
4 surcharges relating to only that portion of the
6 policy years 1988 to 1992 in which the
8 self-insured employer insured its workers'
10 compensation obligations. The surcharge factor,
12 as determined by the board under this chapter,
14 must be adjusted to take into consideration the
16 policy years or portions of policy years 1988 to
18 1992 in which a self-insured employer was
20 self-insured.

22 The adjustment is determined as follows. The
24 surcharge factor must be multiplied by the factor
26 attributed to each of the years 1988 to 1992, as
28 set forth in the table below. If a self-insured
30 employer was insured only during a portion of a
32 policy year, then the factor for that year is
34 prorated based on the ratio of the number of days
36 in the policy year during which the self-insured
38 employer was insured to 365 days.

<u>Policy Year</u>	<u>Factor</u>
24 <u>1988</u>	<u>28.48%</u>
26 <u>1989</u>	<u>30.70%</u>
28 <u>1990</u>	<u>23.26%</u>
30 <u>1991</u>	<u>11.55%</u>
32 <u>1992</u>	<u>6.01%</u>

34 (d) The board shall administer the surcharges on
36 self-insured employers as follows.

38 (i) The board shall issue surcharge billings
40 to self-insured employers, pursue collection
42 of all invoiced surcharges, initiate legal
44 proceedings as necessary to collect
46 surcharges and maintain records adequate to
48 administer the surcharge process. The
50 records of the board and of the bureau form
the basis for identifying self-insured
employers who are subject to this paragraph.

 (ii) Annual surcharges may be paid in a
single lump sum within 30 days of the receipt
of the pool's invoice or in quarterly
installments at the self-insured employer's
option. The board shall issue a yearly
invoice as soon as practicable after the
self-insured employer's plan approval or
renewal date and receipt of all necessary

2 supporting information from the
3 superintendent. Each invoice must contain a
4 schedule of dates when quarterly installments
5 are due and clearly state the policy year or
6 years for which the surcharge is imposed, the
7 surcharge percentage multiplied by the factor
8 applicable to each policy year and the amount
9 of the surchargeable premium.

10 (iii) Each individual self-insured employer
11 shall report final audited payrolls to the
12 pool not later than 60 days after the end of
13 each plan year and each self-insured employer
14 that is a member of a self-insured group or
15 the group's administrator, as the group may
16 select, shall report final audited payrolls
17 to the pool not later than 120 days after the
18 end of each plan year and shall remit with
19 the audit information any additional
20 surcharges resulting from the audit.

21 (e) Self-insured employers have the following
22 obligations with respect to the surcharge process.

23
24
25 (i) As a condition of continuing
26 authorization to self-insure, each
27 self-insured employer and each group
28 self-insurance administrator shall assist the
29 board and the superintendent in the
30 calculation, billing and collection of any
31 applicable surcharge. The required
32 assistance includes maintaining and
33 providing, upon request of the board or the
34 superintendent, actual premium history and
35 all payroll and experience information
36 necessary to calculate self-insured employer
37 premiums, as specified in this subparagraph.
38 Information provided by the self-insured
39 employer is subject to audit by the pool and
40 the superintendent at any time and
41 self-insured employers shall provide to the
42 pool, or its designee, and to the
43 superintendent full and complete access to
44 all books and records relating in any way to
45 the audit. Group self-insurance
46 administrators shall give prompt notice to
47 the superintendent of any changes in group
48 membership.

49 (ii) Information provided by self-insured
50

2 employers to the board pursuant to this
3 paragraph is confidential. The board shall
4 protect the confidentiality of all
5 self-insured employer information in its
6 possession, whether the information is
7 obtained directly from the self-insured
8 employer or from the superintendent or a
9 group administrator.

10 (iii) A self-insurance group may act as the
11 collection agent for its members. Any group
12 so electing shall notify the board. The
13 board shall bill the group on a consolidated
14 basis. The group shall remit its entire
15 quarterly payment to the board within 30 days
16 after receiving the invoice, whether or not
17 any members remain in default and notify the
18 board and the superintendent of any
19 delinquency.

20 (iv) Each self-insured employer shall make
21 provisions for possible surcharges in the
22 normal course of operations and pay the full
23 amount of any surcharge installment within 30
24 days after receiving an invoice from the
25 board or the self-insured employer's
26 self-insurance group. Late payments are
27 subject to interest at the rate of 10% per
28 annum.

29 (v) The failure of any self-insured employer
30 or self-insurance group to comply with its
31 duties under this paragraph constitutes
32 grounds for suspension, revocation,
33 termination of the option to self-insure,
34 expulsion from a self-insurance group or
35 other appropriate sanctions authorized under
36 section 12-A, in addition to all procedures
37 for the collection of past-due accounts
38 otherwise available by law to the board or
39 the governing body of the self-insurance
40 group.

41 (f) The superintendent has the following
42 responsibilities with respect to the surcharge
43 process.

44 (i) The superintendent shall furnish to the
45 board, on a monthly basis, a list of all
46 self-insurance plan approvals, renewals and
47 terminations.

2 anniversaries that have occurred since the
3 last report or for any other reason were not
4 included in any previous report, including
5 all approvals, terminations and membership
6 changes for group self-insurers. For each
7 employer listed, the superintendent shall
8 provide all available information necessary
9 for the board's imputed calculations under
10 this paragraph, including: the date the new
11 plan year began; the self-insurance group, if
12 any, to which the self-insured employer
13 belongs; the dates of coverage under each
14 policy issued or renewed in policy years 1988
15 to 1992; the rating information for the
16 current plan year, including estimated
17 payroll by classification, premium rate for
18 each classification, experience modification
19 and other applicable rating adjustments;
20 information relating to changes of ownership
21 or control, changes of operations, changes of
22 name or organizational structure; and other
23 information necessary to determine
24 successorship.

25 (ii) The superintendent shall supplement
26 promptly the initial report as necessary,
27 including any revision to the self-insured
28 employer's rating information on audit, any
29 other additions or corrections to incomplete
30 or inaccurate information provided in the
31 initial report and the length of the plan
32 year, if shorter than 12 months.

33 (g) Self-insured employers include any successor
34 entity to a self-insured employer subject to the
35 surcharge imposed by this subparagraph. A
36 successor entity includes entities purchasing all
37 or a portion of the assets of a self-insured
38 employer subject to the surcharge or the surviving
39 entity in any other merger, consolidation,
40 reorganization or restructuring involving a
41 self-insured employer subject to the surcharge
42 imposed by this subparagraph. If business
43 operations that were insured under a single
44 workers' compensation insurance policy during any
45 portion of the fresh start period are subsequently
46 separately owned by virtue of any sale of assets,
47 merger, consolidation, reorganization,
48 dissolution, reincorporation, restructuring or
49 other transaction or series of transactions, for
50

2 purposes of this subparagraph each business is
3 treated as a distinct employer, subject to
4 surcharges as either an insured employer or a
5 self-insured employer.

6 (h) A self-insured employer that secured its
7 obligation to provide workers' compensation
8 benefits under the Workers' Compensation Act
9 through a self-insurance program approved by the
10 superintendent for the entirety of that
11 self-insured employer's policy years 1988 to 1992,
12 in which the self-insured employer actually had an
13 obligation to secure benefits under the Workers'
14 Compensation Act is not subject to the surcharge.

15 (i) Self-insured employers that commence
16 operations in the State on or after July 1,
17 1995 are subject to surcharge under this
18 subparagraph on the same basis as
19 self-insured employers that secured
20 compensation under the Workers' Compensation
21 Act by the purchase of an insurance policy
22 throughout the entire fresh start period.

23 (3) An employer may, as specified in this
24 subparagraph, prepay all of its surcharges for a period
25 of 10 consecutive policy years or plan years. The
26 10-year period starts with the employer's first renewal
27 date or plan year following July 1, 1995. Within 30
28 days after the inception of the first plan year or
29 first policy renewal date following July 1, 1995, if
30 the employer intends to exercise this option, the
31 employer must file with the pool written notice
32 electing to make a lump-sum payment of surcharges and
33 shall include with the notice the employer's full
34 lump-sum payment. If the election is not made within
35 30 days after the first day of the first plan year or
36 policy year following July 1, 1995, the option expires
37 and is no longer available. The pool shall implement
38 such procedures for administering this option as the
39 board determines necessary. An employer that elects
40 this option shall reimburse the pool for its expenses
41 of administering this option for that employer,
42 including the cost of individually allocating those
43 costs to individual employers, in accordance with
44 billing procedures developed and implemented by the
45 board. This subparagraph does not eliminate or limit
46 the employer's liability to pay adjusted surcharges or
47 supplemental surcharges pursuant to paragraph E or
48 section 2394.

2 For purposes of this subparagraph, "lump-sum payment"
4 is the surcharge for the first year multiplied by 10
 and discounted to net present value using:

6 (a) A 5% discount rate;

8 (b) The first day of the first plan year or
10 policy year starting on or after July 1, 1995; and

12 (c) An assumption that the surcharge for each of
14 the 10 plan years or policy years would have been
 paid on the first day of each subsequent plan year
 or policy year.

16 E. The initial surcharge percentage may be adjusted by the
18 pool in accordance with the following provisions.

20 (1) Each July 1st beginning in 2003, the board shall
22 establish a surcharge percentage to be imposed on all
24 workers' compensation insurance policies issued or
26 renewed on or after that date until the effective date
28 of any subsequent adjustment in the surcharge
30 percentage established by the board; except that, if
32 supplemental surcharges and assessments have commenced
34 under section 2394, no further adjustments may be made
36 under this subparagraph. The surcharge must be at a
38 level determined by the board to be sufficient to
 produce cash receipts over the ensuing 24 months that,
 together with all other funds reasonably anticipated by
 the board to be available on a cash basis over that
 period, produce an amount not less than the pool's
 projected cash requirements to meet its obligations
 over that period. In making that determination, the
 board shall employ and rely upon the advice of
 professional and consulting services, including
 services available through the pool's internal staff,
 as the board determines necessary.

40 (2) If the surcharge percentage established under this
42 subparagraph exceeds 6.32%, then a prepaid employer
44 shall pay surcharges for that future assessment period
46 at the same rate as those employers who paid annually,
48 based upon the employer's surchargeable premium for the
50 policy year or plan year to which the increased
 surcharge percentage applies. A prepaid employer may
 take a credit for the surcharges prepaid for that
 assessment period pursuant to section 2393, subsection
 2, paragraph D, subparagraph (3) in an amount equal to
 the net present value calculated on a basis consistent

2 with paragraph D, subparagraph (2), division (d),
3 subdivision (ii). If the surcharge percentage is less
4 than 6.32% for that future assessment period, then the
5 pool shall refund to a prepaid employer an amount equal
6 to the difference between the value of the lump-sum
7 surcharge paid for the future assessment period
8 calculated on a basis consistent with paragraph D,
9 subparagraph (2), division (d), subdivision (ii) and
10 the amount of surcharge due based upon the adjusted
11 surcharge percentage and applicable surchargeable
12 premium. For purposes of this subparagraph, "prepaid
13 employer" means an employer who has elected to pay
14 surcharges on a lump-sum basis pursuant to paragraph D,
15 subparagraph (3).

16 (3) The board has authority to make interim
17 adjustments in the surcharge percentage on or after
18 July 1, 2003, to be effective on dates other than July
19 1st as specified by the board, to the extent considered
20 necessary by the board to produce sufficient cash
21 receipts from surcharges over the ensuing 24 months
22 that, together with all other funds reasonably
23 anticipated by the board to be available on a cash
24 basis to the pool over the ensuing 24 months, will be
25 sufficient to meet the pool's anticipated cash
26 requirements over that period.

27 (4) In projecting the pool's anticipated cash
28 requirements, the board shall maintain a reserve equal
29 to 25% of the cash expenditures of the pool over the
30 immediately preceding 12-month period.

31 F. The surcharges required by this subsection are
32 considered premium for cancellation and nonrenewal purposes
33 only and are not subject to premium tax, Maine Insurance
34 Guaranty Association assessments, agents' commissions or
35 other payments required on insurance policy premiums.

36 G. Employer surcharges required by this chapter are
37 suspended if:

38 (1) The board determines that the pool's assets are
39 adequate to satisfy all remaining obligations,
40 including any necessary repayment to insurers that
41 satisfy the requirements of subparagraph (2); and

42 (2) The insurers and employers have been repaid by the
43 pool in amounts necessary to produce a ratio of actual
44 surcharges under this subsection paid by employers
45 calculated on a net present value basis using January
46 1990 values.

2 1, 1995 as a valuation date and a discount rate of 5%
3 to actual payments by insurers to the pool under
4 subsection 1, valued as of January 1, 1996, not
5 including employer surcharges remitted to the pool by
6 insurers, that is the same as 11 to 6.5, for employers
7 and insurers respectively.

8 H. If the board suspends initial surcharges and the pool
9 subsequently requires additional assets to satisfy remaining
10 obligations, the board shall order additional initial
11 surcharges consistent with this subsection. The board shall
12 review the relationship between the pool's assets and
13 liabilities as often as determined necessary by the board,
14 but at least annually. Projections of assets and
15 liabilities contained in any quarterly or annual statements
16 of operation prepared by or at the direction of the board do
17 not constitute a determination under this subsection.

18 **3. Payments by Maine Insurance Guaranty Association.** The
19 association shall pay to the pool \$1,538,039 on or before
20 February 15th, May 15th, August 15th, and November 15th of each
21 year for 40 consecutive calendar quarters beginning August 15,
22 1996.

23 A. Each payment made by the association to the pool under
24 this subsection is treated as a covered claim pursuant to
25 section 4435, subsection 4, except that any provision or
26 authority for the association to seek reimbursement or
27 recoupment from any source other than by assessments to
28 association member insurers does not apply. This section
29 does not limit or impair a member insurer's right to
30 recoupment under section 4447.

31 B. The quarterly payments by the association to the pool as
32 required by this subsection must be made regardless of the
33 financial condition or actual or projected cash requirements
34 of the pool.

35 **§2394. Funding subsequent cash deficiencies**

36 If the insurers have made payments to the pool totalling
37 \$65,000,000 valued as of January 1, 1996 pursuant to section
38 2393, subsection 1 and the employers have paid surcharges
39 totalling \$110,000,000 calculated on a net present value basis
40 using January 1, 1995 as a valuation date and a discount rate of
41 5%, pursuant to section 2393, subsection 2, on each July 1st
42 following the full payment date, or more often if the board
43 considers it necessary:

44 **1. Determine cash requirements.** The board shall determine
45 the cash requirements of the pool as of the valuation date
46 and as of the date of the full payment date, or more often if
47 the board considers it necessary.

2 the amount of cash receipts that will be required over the
3 ensuing 24 months, in addition to all other funds reasonably
4 anticipated by the board to be available on a cash basis over
5 that period, to produce an amount not less than the pool's
6 projected cash requirements to meet its obligations over that
7 period. In making this determination, the board shall employ and
8 may rely upon professional and consulting services, including
9 such services as may be available through its internal staff, as
10 the board considers necessary. If cash requirements
11 determinations under this subsection commence, any cash
12 requirements determinations and initial surcharge percentage
13 adjustments under section 2393, subsection 2, paragraph E cease.
14 In projecting the pool's anticipated cash requirements, the board
15 shall maintain a reserve equal to 25% of the cash expenditures of
16 the pool over the immediately preceding 12 months; and

17 **2. Establish supplemental surcharges and assessments.** The
18 pool shall establish, bill and collect supplemental surcharges
19 from employers and assessments from insurers in an aggregate
20 amount determined by the board to be sufficient to satisfy the
21 pool's cash requirements, determined under subsection 1, in
22 accordance with the following provisions.

23 A. Liability for funding cash requirements determined under
24 subsection 1 is allocated 70% to employers and 30% to
25 insurers.

26 B. The pool shall establish a surcharge on employers,
27 reflected as a percentage of surchargeable premium, that the
28 board reasonably expects will be sufficient to generate cash
29 receipts over the ensuing 24-month period equal to 70% of
30 the pool's cash requirements for such period as determined
31 pursuant to subsection 1. The resulting employer surcharges
32 are billed and collected in the same manner as provided in
33 section 2393, subsection 2, paragraph D.

34 C. The pool shall establish, bill and collect from insurers
35 assessments equal to the remaining 30% of the pool's cash
36 requirements. Major insurers are responsible for 90% and
37 minor insurers are responsible for 10% of these assessments.

38 (1) Assessments under this paragraph must be
39 determined and billed quarterly by the pool in an
40 amount equal to 42.9% of the cash receipts actually
41 received by the pool from employer supplemental
42 surcharges during the immediately preceding calendar
43 quarter and must be allocated among existing insurers
44 in the same category in direct proportion to amounts
45 paid by or otherwise collected from those insurers by
46 or on behalf of the pool under section 2393, subsection
47 2, paragraph D.

2 1. Assessments billed by the pool must be paid within
30 days of the billing date.

4 (2) The enforcement provisions established by section
2393, subsection 1, paragraph C apply to assessments on
6 insurers under this paragraph.

8 D. For purposes of establishing the surcharge upon
employers, the pool's cash requirements may not include any
10 amounts necessary to compensate the pool for any failure by
insurers to pay the full amount of the assessments charged
12 to insurers under this subsection.

14 For the purposes of this section, "full payment date" means
the date on which insurers have paid the entire amount required
16 pursuant to section 2393, subsection 1 and on which employers
have paid the entire amount required pursuant to section 2393,
18 subsection 2.

20 **§2395. Revisions to residual market mechanism plan of operation**

22 1. Plan manager. The board shall appoint a plan manager
who reports to and serves at the pleasure, direction and control
24 of the board. The board has the exclusive right to retain any
individual or organization as plan manager and to terminate the
26 plan manager. The board is exclusively responsible for
establishing the terms and conditions, including compensation,
28 under which the plan manager serves.

30 2. Appointment of employer representatives. The 5 members
of the board of governors serving as representatives of the
32 business community of the State are appointed by the Governor for
staggered 3-year terms, with at least one member appointed each
34 year. All members whose terms have not expired on or before July
3, 1995 continue on the board until their terms expire.

36 3. Staff and consultants. The board may employ, or
otherwise retain, staff and consultants as the board considers
38 necessary or appropriate to effect the purposes of this chapter
and chapter 440 and to otherwise administer pool operations. The
40 board or its designee is exclusively responsible for establishing
the responsibilities and compensation of all staff employed by
42 the pool and are exclusively responsible for establishing the
terms and conditions, including compensation, of all consultants
44 retained by the pool.

46 4. Transfer of policies. An insurer may transfer any
rights, obligations and liabilities of a workers' compensation
48 insurance policy issued pursuant to the residual market mechanism.

2 **5. Authority to borrow money.** The pool may, when directed
3 by the board, borrow money and enter into financing transactions
4 in the name of and on behalf of the pool and issue evidences of
5 indebtedness in connection with those transactions. To secure
6 the payment of any indebtedness incurred pursuant to this
7 subsection, the pool may pledge and create a lien upon any or all
8 of its receivables or revenues or grant such other security
9 interests in its property as the board determines reasonable and
10 proper for the security of the holders of indebtedness. The
11 terms and conditions of any borrowing, including, but not limited
12 to, dates, maturities, interest and rates, must be established by
13 the board.

14 **§2396. Coordination of law**

15 **1. Causes of action extinguished; exception.**
16 Notwithstanding Title 1, section 302, a cause of action or
17 administrative proceeding that could have been asserted or
18 instituted, whether or not pending, prior to or on the effective
19 date of this Act arising out of or relating to sections 2386 and
20 2386-A or due to an insurer's performance as a servicing carrier
21 or other participation in the residual market mechanism may not
22 exist or be brought against the pool, the board or an insurer
23 that has timely paid to the pool in full at least the allocated
24 share pursuant to section 2393, subsection 1. This subsection
25 does not apply to: claims by servicing carriers for quarterly
26 reimbursement from the pool; claims arising from a written
27 agreement among any of the major insurers and the pool relating
28 to payment of the allocated share of a delinquent insurer
29 pursuant to section 2393, subsection 1; claims by an individual
30 policyholder against its insurer; or claims by employees for
31 benefits under residual market policies.

32 **2. Repeal of chapter 720.** The Bureau of Insurance Rules,
33 chapter 720, is repealed effective July 1, 1995. The collection
34 procedures set forth in section 2393, subsection 2, paragraph D,
35 subparagraph (2) apply to surcharges assessed under chapter 720
36 prior to the effective date of this chapter.

37 **3. Vacation of orders.** All orders of the superintendent
38 relating to surcharges and assessments arising out of section
39 2386-A are vacated except to the extent that they establish the
40 amount and method of calculation of surcharges paid or to be paid
41 by employers on policies issued or renewed with effective dates
42 on or before June 30, 1995, and self-insurance plan years
43 beginning on or before June 30, 1995. All other decisions,
44 orders and rules issued and adopted by the superintendent
45 relating to workers' compensation insurance are invalid to the
46 extent that they are inconsistent with this chapter.

2 **Sec. 12. 24-A MRSA §4435, sub-§4**, as amended by PL 1989, c.
3 751, §3, is further amended to read:

4
5 **4. Covered claim.** "Covered claim" means an unpaid claim,
6 including one for unearned premiums but excluding one for
7 punitive damages, arising under and within the coverage and
8 applicable limits of a policy of a kind of insurance referred to
9 in section 4433 to which this subchapter applies issued by an
10 insurer ~~which~~ that becomes an insolvent insurer after May 9,
11 1970, and where:

12 A. The claimant or insured is a resident of this State at
13 the time of the insured event; or

14 B. The property from which the claim arises is permanently
15 located in this State.

16 "Covered claim" ~~shall~~ does not include any amount due any
17 insurer, reinsurer, affiliate, insurance pool or underwriting
18 association, as subrogation recoveries or otherwise, except that
19 any payment made to the workers' compensation residual market
20 pool pursuant to section 4438, subsection 1, paragraph A-1 must
21 be included as a covered claim.

22
23 **Sec. 13. 24-A MRSA §4435, sub-§5**, as enacted by PL 1969, c.
24 561, is amended to read:

25 **5. Insolvent insurer.** "Insolvent insurer" means an insurer:

26 A. Authorized to transact insurance in this State either at
27 the time the policy was issued or when the insured event
28 occurred; and

29 B. Determined to be insolvent by a court of competent
30 jurisdiction.

31 Effective July 1, 1995, the workers' compensation residual market
32 pool, as created by the Bureau of Insurance Rules, Chapter 440,
33 is deemed an insolvent insurer.

34 **Sec. 14. 24-A MRSA §4438, sub-§1, ¶A-1** is enacted to read:

35 A-1. Pay to the workers' compensation residual market pool
36 the sum of \$1,538,039 on or before February 15th, May 15th,
37 August 15th and November 15th of each year beginning August
38 15, 1996 and continuing for 40 consecutive calendar
39 quarters. Each payment made under this paragraph must be
40 treated as the payment of a covered claim except that the
41 association may not seek reimbursement or recoupment from

2 any source other than by assessments to member insurers.
3 Member insurers are allowed to recognize assessments made
4 pursuant to this paragraph in rates and premiums as provided
5 in section 4447;

6 **Sec. 15. 24-A MRSA §4438, sub-§1, ¶C,** as amended by PL 1989,
7 c. 67, §5, is further amended to read:

8
9 C. Allocate claims paid and expenses incurred among the 3
10 accounts separately; and assess member insurers separately
11 for each account in amounts necessary to pay:

12
13 (1) The obligations of the association under paragraph
14 A, subsequent to an insolvency, the obligations of the
15 accounts for shortfalls under section 4440-A, and for
16 preinsolvency assessments, if required by section 4440,
17 subsection 3, paragraph B, and the obligations of the
18 association under paragraph A-1;

19 (2) The expenses of handling covered claims subsequent
20 to an insolvency;

21 (3) The cost of examinations under section 4445; and

22 (4) Other expenses authorized by this subchapter;

23
24 **Sec. 16. 24-A MRSA §4440, sub-§1,** as amended by PL 1989, c.
25 67, §6, is further amended to read:

26
27 **1. Proportion.** The assessments of each member insurer
28 provided for under section 4438 ~~shall~~ must be in the proportion
29 that the net direct written premiums of the member insurer for
30 the calendar year preceding the assessment on the kinds of
31 insurance in the account bears to the net direct written premiums
32 of all member insurers for the same calendar year on the kinds of
33 insurance in the account, except that assessments to cover a
34 shortfall in any account ~~shall-be~~ are determined in accordance
35 with section 4440-A. In the case of a withdrawn insurer, the
36 average of its net direct written premium for the 5 calendar
37 years prior to withdrawal ~~shall~~ excluding premium on business
38 written as a workers' compensation residual market servicing
39 carrier for assessments made on or after January 1, 1996, must be
40 used as its assessment base for any year following withdrawal in
41 which the insurer has no net direct written premium.
42
43

44
45 **Sec. 17. 24-A MRSA §4440-A, sub-§2,** as repealed and replaced
46 by PL 1989, c. 641, §1 and affected by §2, is amended to read:

47
48 **2. Limit on assessment.** Subject to the 2% limitation, an

2 assessment made under this section may not exceed 5% of the
3 average of a member insurer's net income of the 3 years prior to
4 the year in which the assessment is made for any member insurer:

6 A. That has surplus of less than ~~\$12,000,000~~ \$15,000,000
7 and either a ratio of total net direct written premium to
8 total surplus greater than 2 or net income of less than
9 \$250,000 for the year preceding the assessment. For
10 purposes of this subsection, "net income" means the sum of
11 underwriting income and investment income, net of dividends
12 to policyholders and federal and foreign income taxes
13 incurred, as reported on the insurer's annual statement
14 filed with the superintendent. "Total surplus" means
15 surplus as regards policyholders, as reported on the
16 insurer's annual statement filed with the superintendent; or

18 B. That has a surplus of less than ~~\$12,000,000~~ \$15,000,000
19 and has fewer than 3,000 policyholders.

20 **Sec. 18. Nonseverability.** The following provisions apply.

22 1. If any portion of the Maine Revised Statutes, Title
23 24-A, chapter 26 ultimately is declared invalid or determined to
24 be unenforceable in whole or in part by final unappealable
25 judgment of a court of competent jurisdiction and that judgment
26 has the effect of prohibiting either payment to or collection by
27 the workers' compensation residual market pool of the payments
28 required by Title 24-A, section 2393, subsections 1 to 3 or Title
29 24-A, section 2394, then this Act is invalid and unenforceable
30 and has no force or effect whatever. Following such judgment,
31 all amounts paid to the pool under Title 24-A, chapter 26 must be
32 refunded as soon as possible, together with any investment
33 earnings on those amounts, to the insurers, Maine Insurance
34 Guaranty Association and employers in direct proportion to
35 payments to the pool pursuant to Title 24-A, sections 2393 and
36 2394, and all statutory provisions repealed by this Act and all
37 decisions, orders and rules vacated under section 2396,
38 subsection 3 are revived and have full force and effect.

40 2. Notwithstanding subsection 1, chapter 440 of the Bureau
41 of Insurance Rules remains in full force and effect, except that
42 the Superintendent of Insurance shall institute rulemaking under
43 Title 5, chapter 375, subchapter II to repeal the following
44 sections or portions of chapter 440:

46 A. In subchapter I, section 2, the reference to "2367";

48 B. In subchapter I, section 5, paragraph C, the words "with
the approval of the superintendent";

- 2 C. In subchapter II, section 7, paragraph A, subparagraph
3 (2), the words "subject to the approval of the
4 superintendent";
- 6 D. In subchapter II, section 7, paragraph B, last
7 paragraph, the words "by the superintendent";
- 8 E. In subchapter II, section 7, paragraph C, last
9 paragraph, the words "by the superintendent";
- 12 F. In subchapter II, section 9, first sentence, the words
13 "subject to the approval of the superintendent";
- 14 G. In subchapter II, section 9, paragraph B in its entirety;
- 16 H. In subchapter II, section 10, paragraph C, subparagraph
17 (2), the words "by Title 24-A, section 2367 or";
- 20 I. In subchapter II, section 10, paragraph H, the words
21 "pursuant to Title 24-A, section 2367";
- 22 J. In subchapter II, section 13, paragraphs A, C, D and E;
- 24 K. In subchapter II, section 14 in its entirety; and
- 26 L. In subchapter II, section 15 in its entirety.

28 **Emergency clause.** In view of the emergency cited in the
30 preamble, this Act takes effect when approved.

32

STATEMENT OF FACT

34

36 This bill affects the workers' compensation insurance system
37 in the following ways. It creates the Workers' Compensation
38 Residual Market Deficit Resolution and Recovery Act to provide
39 means to ensure funding of the obligations of the residual market
40 pool, by providing for an initial infusion of \$220,000,000 in net
41 present value funds estimated to be sufficient to pay the pool's
42 future obligations. Insurance companies are required to pay
43 \$65,000,000 of this amount on or before January 1, 1996, with
44 those carriers most active in the market prior to the "Fresh
Start" period paying 90% of that amount.

46 Employers are required to pay \$110,000,000 over a period of
47 8 to 10 years through surcharges at a rate of 6.32% beginning
48 July 1, 1995; current law requires a 9.5% surcharge on policies
49 imposed under the "Fresh Start" statute. These surcharges are
50 allocated between self-insured employers and insured businesses

2 in the State. The remaining portion of the initial payment to
3 the pool is required to be paid by the Maine Insurance Guaranty
4 Association in equal quarterly installments over 10 years that
5 commence on August 15, 1996. These payments will be funded in
6 part by assessments on workers' compensation residual market
7 policies, with spillover assessments to other lines of insurance
8 only as necessary to fund this obligation. If the pool's
9 obligations are satisfied for less than the \$220,000,000
10 infusion, employer surcharges will cease and any excess funds
11 will be returned to employers and insurers in direct proportion
12 to the amounts contributed to the pool. If the pool's
13 obligations are eventually determined to exceed the \$220,000,000
14 net present value funding, the bill contains a provision to fund
15 any excess with 70% of the amount required to be collected from
16 surcharges on workers' compensation policy premiums and 30% to be
17 paid by insurers. No further payments are required from the
18 Maine Insurance Guaranty Association.

19
20 The bill authorizes the Finance Authority of Maine to
21 provide financing assistance to the Maine Workers' Compensation
22 Residual Market Pool in an amount not to exceed \$45,000,000 for
23 loans and \$12,000,000 for use of bond proceeds for capital
24 reserve funds.

25
26 This bill expands the power and authority of the pool's
27 board of governors to actively manage the operations of the
28 pool. The bill gives the board the exclusive right to retain any
29 individual or organization as plan manager and to establish the
30 terms and conditions under which the plan manager serves at the
31 pleasure, direction and control of the board. Unlike current
32 law, the 5 members of the board who represent state employers are
33 appointed by the Governor, beginning with terms existing on or
34 after July 1, 1995. The bill also authorizes the board to employ
35 or otherwise retain staff and consultants necessary or
36 appropriate to effect the purposes of this bill and to otherwise
administer pool operations.

37
38 The bill extinguishes any and all causes of actions and
39 administrative proceedings that could have been asserted or
40 instituted prior to the effective date of the Act arising out of
41 the former "Fresh Start" law or an insurer's performance as a
42 servicing carrier in the "Fresh Start" residual market against
43 the pool, the board and all insurers that timely pay in full at
44 least their allocated share. The bill preserves only claims of
45 the pool to enforce the required payments by insurers under the
46 bill, claims by or between individual policyholders and their
47 insurers and claims by employees for benefits under residual
48 market policies written during the 5-year "Fresh Start" period.