

# MAINE STATE LEGISLATURE

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**LAWS**

OF THE

**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

AND AT THE

**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Co., Inc.  
Augusta, Maine

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND TWELFTH LEGISLATURE  
1985

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shall appear in person before the committee and shall provide the committee with the most recent annual audit of decree standards and the corrective action plans required by the audit. The members of the Consumer Advisory Board may attend the commissioner's presentation and provide an independent report of its activities to the committee.

Effective July 16, 1986.

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## CHAPTER 713

S.P. 902 - L.D. 2263

AN ACT Concerning Self-funded Pools among  
Public Agencies for Tort and Property  
Liability.

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

Sec. 1. 14 MRSA §8116, first ¶, as amended by PL 1981, c. 602, §1, is further amended to read:

The legislative or executive body or any department of the State or any political subdivision may procure insurance against liability for any claim against it or its employees under this chapter and including any activity not described in this chapter, but for which immunity is waived by another act. If the insurance provides protection in excess of the limit of liability imposed by section 8105, then the limits provided in the insurance policy shall replace the limit imposed by section 8105. If the insurance provides coverage in areas where the governmental entity is immune, the governmental entity shall be liable in those substantive areas but only to the limits of the insurance coverage. Reserve funds, excess insurance or reinsurance contracts maintained by a governmental entity, insurer providing liability insurance or a public self-funded pool to meet obligations imposed by this Act shall not increase the limits of liability imposed by section 8105.

Sec. 2. 14 MRSA §8116, 2nd ¶, as enacted by PL 1981, c. 602, §2, is amended to read:

A governmental entity or a public self-funded pool, which self-insures against the obligations and liabilities imposed by this Act, shall designate

funds set aside to meet such obligations and liabilities as self-insurance funds. Any such governmental entity which self-insures under this Act or any entity that is a member of a public self-funded pool shall maintain as part of its public records a written statement which shall include a provision setting forth the financial limits of liability assumed by the governmental entity, those limits to be no less than the limits imposed in this Act, and a provision setting forth the scope of the liability assumed by the governmental entity, or the pool, that scope to be no less than that imposed in this Act.

Sec. 3. 20-A MRSA §1001, sub-§5-A is enacted to read:

5-A. Public self-funded pools. They may participate in a public self-funded pool created under Title 30, chapter 203-B.

Sec. 4. 24-A MRSA §402, sub-§1, as repealed and replaced by PL 1969, c. 177, §5, is amended to read:

1. Reciprocal insurer. A "reciprocal" insurer is an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact common to all such persons to provide reciprocal insurance among themselves. Any public self-funded pool operating under Title 30, chapter 203-B is not an insurance company or insurer under the laws of this State. The development, administration and provision of a public self-funded pool's programs and coverages do not constitute doing an insurance business.

Sec. 5. 30 MRSA c. 203-B is enacted to read:

CHAPTER 203-B

PUBLIC SELF-FUNDED POOLS

§1971. Intent

The Legislature finds and determines that insurance protection is essential to the proper functioning of this State's political subdivisions; that the resources of political subdivisions are burdened by the securing of that protection through standard carriers; that the services provided by this State's political subdivisions are vital to the people of the State; and that all financial and administrative contributions made by a political subdivision to a public self-funded pool, as authorized by section 1917

and chapter 203 and created under this chapter, are made for a public and governmental purpose and that the contributions benefit each contributing political subdivision.

§1972. "Political subdivision" defined

A "political subdivision" means any city, town, plantation, county, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, municipal electric utility and school administrative unit. "School administrative unit" shall have the same meaning as that found in Title 20-A, section 1, subsection 26.

§1973. Public self-funded pools; powers; limitations

1. Coverage. Any public self-funded pool formed by 10 or more municipalities or school administrative units or an organization representing 10 or more political subdivisions may provide risk management and coverage for pool members and employees of pool members, for acts or omissions arising out of the scope of their employment, including any or all of the following:

A. Casualty insurance, including general and professional liabilities coverage, but excluding workers' compensation insurance provided pursuant to Title 39;

B. Property insurance, including marine insurance and inland navigation, transportation, boiler and machinery insurance coverage;

C. Automobile insurance and protection against other liability and loss associated with the ownership of motor vehicles;

D. Surety and fidelity insurance coverage; and

E. Environmental impairment insurance coverage.

2. Limitations. Any public self-funded pool may not provide for hospital, medical, surgical or dental benefits to the employees of the member political subdivisions in the pool except when those benefits arise from the obligations and responsibilities of the pool in providing automobile insurance coverage and protection against other liability and loss associated with the ownership of motor vehicles.

3. Excess insurance; reinsurance. A public self-funded pool shall obtain excess insurance or reinsurance. Aggregate excess insurance to be purchased by the pool under its plan shall be bound prior to the effective date of the plan. The insurance shall limit the exposure of the pool to a defined level both as to ultimate claims values and loss ratio at which recovery from the insurer will be realized. The attachment point of continuing aggregate excess coverage shall provide risk relief to the plan adequate to its financing needs.

4. Amounts to be paid when coverage issues. Any member joining the pool before the effective date of the plan or during the first year of operation must pay not less than 25% of the first year's annual contribution before coverage becomes effective.

5. Underwriting guidelines. Prior to the operation of the pool's plan, underwriting guidelines shall be adopted which embody rate charges to prospective members at a level adequate to its financial needs as certified by the pool's actuary. Fixed costs of operations shall likewise be covered for the first prospective fund year and an overlay sufficient to reasonably meet immediate claims costs shall be held in a separate account to be used solely for this purpose.

6. Actuarial advisory opinion. Prior to the operation of the pool's plan, the pool must obtain an independent actuarial advisory opinion report given by a member of the American Academy of Actuaries qualified as a casualty loss reserve specialist as defined by the National Association of Insurance Commissioners. Two copies of this report shall be filed with the Superintendent of Insurance; one copy shall be filed with each individual member of the board of directors; and one copy shall be provided to each prospective pool member. The report shall address:

A. The financial viability of the plan; and

B. Ultimate risk exposures attendant to each line being underwritten by the plan.

7. General powers. A public self-funded pool, for the purposes of carrying on the business of the public self-funded pool whether or not a body corporate, may sue or be sued; make contracts; hold and dispose of real property; and borrow money, contract debts and pledge assets in the name of the public self-funded pool.

8. Establishment as separate legal or administrative entity. The public self-funded pool may be established as a separate legal or administrative entity for purposes of effectuating public self-funded pool agreements.

§1974. Public self-funded pool not insurance company

Any public self-insurance pool operating under this chapter is not an insurance company, reciprocal insurer or insurer under the laws of this State. The development, administration and provision of public self-funded pool programs and coverages authorized by section 1973, subsection 1, by the governing authority created to administer the pool does not constitute doing an insurance business.

§1975. Contract establishing public self-funded pool; provisions

1. Provisions to be included in contract. Any contract entered into under this chapter shall provide:

A. A financial plan setting forth in general terms:

(1) The insurance coverages to be offered by the public self-funded pool; applicable deductible levels; and the maximum level of claims which the pool will self-insure;

(2) The amount of cash reserves to be set aside for the payment of claims;

(3) The amount of insurance to be purchased by the pool to provide coverage over and above the claims which are not satisfied directly from the pool's resources and the terms of that policy set forth in section 1973, subsection 3; and

(4) The amount of aggregate excess insurance coverage to be purchased; and

B. A plan of management which provides for all of the following:

(1) The means of establishing the governing authority of the pool;

(2) The responsibility of the governing authority with regard to fixing contributions

to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposal of surpluses and administering the pool in the event of termination of insolvency;

(3) The basis upon which new members may be admitted to and existing members may leave the pool;

(4) The identification of funds and reserves by exposure area;

(5) Other provisions necessary or desirable for the operation of the pool; and

(6) The selection of a governing authority, which shall be a board of directors for the pool, a majority of whom shall be elected or appointed officials of pool members and 2 of whom shall be public members from the areas served by the pool who are not currently serving as either elected or appointed officials; and

C. A provision that if the assets of a public self-funded pool are at any time actuarially determined to be insufficient to enable the pool to discharge its legal liabilities and other obligations and to maintain actuarially sound reserves, it shall within 30 days make up the deficiency or levy a prorated assessment upon its members for the amount needed to make up the deficiency.

Members of the pool shall be given 30 days notice of any assessment due.

The contract must provide sanctions for any failure to comply with a mandatory assessment.

#### §1976. Audit requirements

1. Filing of audited financial statements. Each public self-funded pool created in this State shall file with the members of the pool, on or before the last day of the 6th month following the end of the pool's fiscal year, audited financial statements certified by an independent certified public accountant. The financial statement shall include, but not be limited to, actuarially certified appropriate reserves for known claims and expenses associated with those claims, claims incurred but not reported and expenses associated with those claims, unearned premiums and reserve for bad debts.

The audited financial statement shall include information concerning the adequacy of the plan. This report shall result from a charge by the directors to the plan's actuary and auditor and shall address excess insurance, charges for coverage to members, service agents' costs and costs of administration of the program.

The actuarial opinion shall be given by a member of the American Academy of Actuaries qualified as a casualty loss reserve specialist as defined by the National Association of Insurance Commissioners. Two additional copies of the audited financial statements shall be filed with the Superintendent of Insurance.

2. Failure to provide for audited financial statements. If a public self-funded pool fails to provide for the audited financial statements required by subsection 1, the Superintendent of Insurance shall perform or cause to be performed the audit and the public self-funded pool shall reimburse the Superintendent of Insurance for the cost of the audit.

Effective July 16, 1986.

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## CHAPTER 714

H.P. 1489 - L.D. 2105

### AN ACT Providing for the 1986 Amendments to the Finance Authority of Maine Act.

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

Sec. 1. 5 MRSA §1511, as amended by PL 1985, c. 512, Pt. D, is repealed and the following enacted in its place:

#### §1511. Reserve for General Fund Operating Capital

The State Controller may, at the close of each fiscal year, transfer from the Unappropriated Surplus of the General Fund to the Reserve for General Fund Operating Capital such amounts as may be available from time to time up to an amount of \$1,000,000 a year until a maximum of \$25,000,000 is achieved.

Sec. 2. 10 MRSA §956, as amended by PL 1985, c. 344, §2, is further amended to read: