

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

Sec. 1. 20-A MRSA §15603, sub-§8, ¶B, as amended by PL 1997, c. 787, §6, is further amended to read:

B. Lease costs for school buildings when the leases, including leases under which the school administrative unit may apply the lease payments to the purchase of portable, temporary classroom space beginning January 1, 1988, have been approved by the commissioner for the year prior to the year of allocation. Beginning July 1, 1998 lease cost includes:

(1) Administrative space. A school administrative unit may lease administrative space with state support until July 1, 2003. A school administrative unit engaged in a lease-purchase agreement for administrative space is eligible for state support until July 1, 2008;

(2) Temporary interim nonadministrative space.

(a) A school administrative unit with state-approved need for nonadministrative space may lease temporary interim space, with state support, for a maximum of 5 years. A school administrative unit that has a major capital improvement application or a school revolving renovation fund application on file with the department that is not rated high enough by the department using the department's rating scale compared to other school administrative units to obtain funding to correct problems with its facilities may appeal to the state board if the limitation in this division presents an undue burden. The board's decision is final. In making a determination on a school administrative unit's request for relief based on undue burden, the state board must consider, but is not limited to considering, the following:

- (i) Fiscal capacity;
- (ii) Enrollment demographics;
and
- (iii) Any unforeseen circumstances not within the control of the school administrative unit.

The state board's decision is final.

(b) A school administrative unit engaged in a lease-purchase agreement for temporary interim nonadministra-

tive space is eligible for state support for a maximum of 10 years; and

(3) Permanent small nonadministrative space that replaces or is converted from existing approved leased portable space. The existing leased portable space will be eligible for state support until July 1, 2003. Once an existing leased portable space has been converted into a permanent nonadministrative space through an approved lease-purchase agreement, such space is eligible for state support for a maximum of 10 years.

The Department of Education shall adopt rules necessary to implement this paragraph. Rules adopted by the Department of Education to implement this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter H-A 2-A;

See title page for effective date.

CHAPTER 315

H.P. 629 - L.D. 852

An Act To Promote Alternatives in Group Self-insurance

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

Sec. 1. 39-A MRSA §403, sub-§4, as amended by PL 1997, c. 126, §8, is further amended to read:

4. Group self-insurers; application. Except for the provision relating to individual public employer self-insurers, subsection 3 is equally applicable in all respects to group self-insurers. Any employer or group of employers desiring to become a self-insurer shall submit to the Superintendent of Insurance with an application for self-insurance, in a form prescribed by the superintendent, the following:

A. A payroll report for each participating employer of the group for the 3 preceding annual fiscal periods;

B. A report of compensation losses incurred, payments plus reserves, by each participating employer of the group for the periods described in paragraph A;

C. A sworn itemized statement of the group's assets and liabilities; satisfactory proof of financial ability to pay compensation for the employers participating in the group plan; and the

group's reserves, their source and assurance of continuance;

D. A description of the safety organization maintained by the employer or group for the prevention of injuries;

E. A statement showing the kind of operations performed or to be performed;

F. An indemnity agreement in a form prescribed by the superintendent that jointly and severally binds the group and each member to comply with the provisions of this Act; and

G. Any other agreements, contracts or other pertinent documents relating to the organization of the employers in the group.

If, upon examination of the sworn financial statement and other data submitted, the superintendent is satisfied as to the ability of the employer or group to make current compensation payments and that the employer's or group's tangible assets make reasonably certain the payment of all obligations that may arise under this Act, the application must be granted subject to the terms and conditions setting out the exposure of cash deposits or securities or an acceptable surety bond, as required by the superintendent. Security Except to the extent provided in subsection 4-A, security against shock or catastrophe loss must be provided either by depositing securities with the board in such amount as the superintendent may determine or by filing with the superintendent and the board an insurance carrier's certificate of a standard self-insurer's reinsurance contract issued to the self-insurer or group in a form approved by the superintendent, providing coverage against losses arising out of one ~~injury~~ occurrence in such amounts as the superintendent may determine, or a combination of the foregoing, satisfactory to the superintendent. Notwithstanding any provision of this chapter, no specific or aggregate reinsurance may be required of any individual public employer that is self-insured and qualifies for the alternative security requirements of subsection 3, paragraph D.

Yearly reports in a form prescribed by the superintendent must be filed by each self-insurer or group. The superintendent may, in addition, require the filing of quarterly financial status reports whenever the superintendent has reason to believe that there has been a deterioration in the financial condition of either an individual or group self-insurer that adversely affects the individual's or group's ability to pay expected losses. The reports must be filed within 30 days after the superintendent's request or at such time as the superintendent shall otherwise set.

After approving any application for self-insurance, the superintendent shall promptly notify the board and

forward to it copies of the application and all supporting materials.

Sec. 2. 39-A MRSA §403, sub-§4-A is enacted to read:

4-A. Group self-insurance reinsurance account. As an alternative to obtaining a reinsurance contract providing coverage against losses arising out of one occurrence, a group self-insurer may participate in a group self-insurance reinsurance account, referred to in this subsection as "an account," as provided in this subsection. More than one account may be established pursuant to this subsection. Each account established pursuant to this subsection is an independent entity and an instrumentality of the State, but the debts and liabilities of an account are not debts and liabilities of the State.

A. Any group self-insurer that is subject to joint and several liability pursuant to subsection 4, paragraph F may apply to reinsure through an account.

(1) Upon the petition of 4 or more authorized group self-insurers, the Superintendent of Insurance may approve an account for the deposit of funds in lieu of reinsurance.

(2) The account must indemnify its participating group self-insurer members for claims incurred during the account's operation. The purpose of the account is to accumulate funds to provide coverage against losses arising out of one occurrence in excess of \$500,000 or such other amounts as may be permitted or required for particular members consistent with the plan of operation established pursuant to paragraph B.

(3) A group self-insurer is deemed to be a member of the account for reinsurance coverage for purposes of a claim if the group self-insurer is a member of the account when an injury occurs or a covered occupational disease loss is incurred.

(4) A group self-insurer that reinsures through an account shall continue to make payments into that account in accordance with the plan of operation established pursuant to paragraph B.

(5) A group self-insurer's participation in an account is considered as a component of the group self-insurer's renewal application. A group self-insurer's membership in an account is considered adequate protection against losses arising out of a single occurrence unless the Superintendent of

Insurance determines, after considering the financial condition and catastrophic loss exposure of both the group self-insurer and the account, that it is necessary to maintain additional reinsurance protection, maintain a lower self-insured retention level or provide some other form of additional security, singly or in combination.

B. An account must operate in accordance with a plan of operation established by the group self-insurer members and approved by the Superintendent of Insurance.

(1) Those group self-insurers creating an account shall submit to the Superintendent of Insurance a plan of operation and any amendments to it that are necessary to ensure the fair, reasonable and equitable administration of the account. The plan of operation is effective upon approval by the superintendent. Any amendments subsequent to the plan's initial approval must be submitted to the superintendent by the plan's board of directors and are effective upon approval by the superintendent.

(2) The plan of operation must:

(a) Create a board of directors and initial bylaws, including the terms and conditions of board membership and the manner by which board members are initially appointed and are replaced when vacancies occur;

(b) Establish the procedures by which all the powers and duties of the account are performed, including, but not limited to, defining the date and conditions pursuant to which the account will commence coverage for claims by participating group self-insurer members and establishing provisions for determining limits of exposure for the account;

(c) Establish procedures for handling assets of a fund created pursuant to paragraph C;

(d) Establish underwriting rules and criteria by which rates are to be established;

(e) Establish procedures by which claims may be filed with the account;

(f) Establish an investment policy for a fund created pursuant to paragraph C;

(g) Establish procedures for records to be kept of all financial transactions of the account, its agents and the board of directors;

(h) Establish procedures for withdrawal from the account by a group self-insurer member, which must, at a minimum, require 90 days' notice from the withdrawing group self-insurer member to the board of directors and the Superintendent of Insurance;

(i) Establish, subject to approval by the Superintendent of Insurance, a minimum level of funding to be achieved by the account; and

(j) Contain additional provisions necessary or proper for the execution of the powers and duties of the board of directors and the ability of the account to meet its obligations.

C. The bylaws of an account established pursuant to this subsection must establish the powers and duties of the board of directors of an account and must include the authority:

(1) To administer a group self-insurance specific reinsurance account fund, to be known in this subsection as "a fund," which must receive payments from participating group self-insurer members of the account as required by paragraph A. The costs of administration by the board of directors and expenses of the account must be borne by the fund;

(2) In its discretion, to secure reinsurance for the fund's exposure and to otherwise invest the assets of the fund to effectuate the purpose of the account, subject to the approval of the Superintendent of Insurance;

(3) To accept or reject applications of group self-insurers to be underwritten by the account, subject to the approval of the Superintendent of Insurance;

(4) To accept or reject applications of a group self-insurer member to self-insure any exposure for one occurrence at a level other than \$500,000, subject to:

(a) Compliance with applicable provisions of the plan of operation established pursuant to paragraph B;

(b) Notice to and approval by the Superintendent of Insurance; and

(c) For higher retention levels, a statement from that member's actuary that the member has adequately funded its additional exposure;

(5) To create a mechanism for assessing participating group self-insurer members if funds are insufficient to pay the claims of the account;

(6) To retain actuarial assistance to be used in the establishment of loss reserves, reinsurance and risk management for the account, and in the development of underwriting criteria and premium rates for group self-insurer members. Rates are subject to approval by the Superintendent of Insurance;

(7) To associate with a participating group self-insurer member in the defense, investigation or settlement of any claim, suit or proceeding that appears to involve indemnity by the account. This authority does not create a duty to investigate, handle, settle or defend any claims, suits or proceedings against a group self-insurer member;

(8) To borrow funds;

(9) To amend the bylaws and plan of operation established pursuant to paragraph B, subject to the approval of the Superintendent of Insurance; and

(10) To exercise such other powers as are established in the plan of operation established pursuant to paragraph B.

D. An account is subject to examination and regulation by the Superintendent of Insurance. The board of directors of an account shall submit, within 120 days after the close of each fiscal year, an audited financial report and an actuarial report for the preceding fiscal year in a form approved by the superintendent. When the superintendent considers it necessary, the superintendent may require an account to maintain specific or aggregate reinsurance at such retention levels as the superintendent determines to be appropriate.

E. The Superintendent of Insurance may address any deficiency in reserves, assets or reinsurance of an account in accordance with this paragraph.

(1) The superintendent may conduct, upon reasonable notice, an examination to deter-

mine the financial condition of an account. An examiner duly qualified by the superintendent may examine the loss reserves, assets, liabilities, excess insurance and working capital of an account. If the superintendent finds that the reserves, excess insurance or assets may be inadequate, or that an account does not have working capital in an amount establishing the financial strength and liquidity of an account to pay claims promptly and showing evidence of the financial ability of an account to meet its obligations to group self-insurer members, the superintendent shall notify an account of the inadequacy. Upon notification, the account within 30 days, or such other time as the superintendent approves, shall file with the superintendent its written plan specifying remedial action to be taken and the time frame for implementation of that plan.

(2) If the superintendent determines, after reviewing the information filed pursuant to paragraph D, that a hazardous financial condition exists, the superintendent shall notify an account of the condition. Upon notification, an account shall implement within 30 days, or such other time as the superintendent approves, its plan to correct any deficiencies and within 90 days shall file with the superintendent proof of remedial action taken. If the superintendent is satisfied that the plan submitted to improve the inadequate condition of an account is sufficient, the superintendent shall notify the account. The account shall report quarterly to the superintendent until any deficiencies and their causes have been corrected.

(3) The Superior Court may appoint the superintendent to act as receiver, in the same manner as for a delinquent insurer pursuant to Title 24-A, section 4360, if the superintendent proves by clear and convincing evidence that a hazardous financial condition exists and that an account is unable or unwilling to take meaningful corrective action.

F. A group self-insurer's liability for participating in an account is governed by this paragraph.

(1) Each participating group self-insurer in an account has a contingent assessment liability in accordance with the plan of operation established pursuant to paragraph B for payment of claims and expenses incurred while a member of the account.

(2) Each contract or other document certifying participation in the account, issued by the account, must contain a statement of the contingent liability of participating group self-insurers.

G. An account is exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on real or personal property.

H. This subsection does not create any liability on the part of, and a cause of action of any nature does not arise against, any group self-insurer member, an account or its agents or employees, the board of directors of an account or its individual members or the Superintendent of Insurance or the superintendent's representatives for any acts or omissions taken by them in the performance of their powers and duties under this subsection. The immunity established by this subsection does not extend to willful neglect or malfeasance that would otherwise be actionable.

I. Assets of an account's fund may be used exclusively for payment of expenses of the account and payment of claims against the account and for no other purpose.

J. The Superintendent of Insurance shall adopt rules to administer and effectuate the intent of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

K. In the event of dissolution of an account, all assets remaining after the satisfaction of all outstanding claims must be distributed to the Treasurer of State to be included in the Maine Self-Insurance Guarantee Association.

See title page for effective date.

CHAPTER 316

H.P. 373 - L.D. 484

**An Act To Implement the
Recommendations of the State House
and Capitol Park Commission
Regarding a Living Memorial in
Capitol Park**

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

Sec. 1. 3 MRSA §902, sub-§1, as repealed and replaced by PL 1989, c. 410, §10, is amended to read:

1. Plan. The commission, with the assistance of the Executive Director of the Legislative Council, shall develop and commend a plan for the preservation and development of the aesthetic and historical integrity of the State House and the grounds specified in section 902-A, subsection 2. By April 1, 1990, the commission shall submit an interim report indicating its progress on the plan to the Legislative Council and the Governor. Upon receipt of the commission's completed plan, the Legislative Council may submit the plan to the Legislature for adoption and enactment as the official state plan for the preservation and development of the aesthetic and historical integrity of the State House. From time to time the commission may submit additional amendments for inclusion in the plan which may be submitted to the Legislative Council for adoption and enactment by the Legislature.

Sec. 2. 3 MRSA §902, sub-§1-A is enacted to read:

1-A. Living memorial garden. The commission shall arrange for and oversee the development and maintenance of a living memorial garden in Capitol Park, the design of which must be consistent with the plan for the garden and double rows of trees developed for the commission in 2002 by Pressley Associates, Inc. Development of the living memorial garden is subject to available funding. The commission may seek and accept funds from private and public sources, including the Percent for Art Program, for the development and maintenance of the garden.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

State House and Capitol Park Commission

Initiative: Allocates funds to establish a base allocation in the event private funds are raised for the State House and Capitol Park Commission.

Other Special Revenue Funds	2003-04	2004-05
All Other	\$500	\$500
Other Special Revenue		
Funds Total	\$500	\$500

See title page for effective date.

CHAPTER 317

H.P. 1121 - L.D. 1529

**An Act To Reclassify Certain Waters
of the State**