

5 §1725-A. RISK MANAGEMENT

1. Creation and authority. The Department of Administrative and Financial Services is designated as the agency through which this chapter is administered. The Director of the Bureau of General Services, in this chapter called the "director," is empowered with such authority as necessary to carry out the purposes of this chapter.

Risk management responsibilities are under the supervision and administrative control of the Director of the Bureau of General Services.

[1991, c. 780, Pt. Y, §51 (AMD) .]

2. Director of General Services. The commissioner shall appoint the Director of the Bureau of General Services, in this chapter called the "director," to administer the State's policy on insurance management, as developed through the authority of this chapter. The director or the director's designee must be knowledgeable of insurance practices and principles and must be qualified by actual experience in the field of risk management to carry out the purposes of this chapter.

[1991, c. 780, Pt. Y, §51 (AMD) .]

3. Personnel. The director may employ such assistants and employees as are necessary, and distribute the risk management duties among such persons as the director considers necessary for economy and efficiency of administration. Employees are subject to the Civil Service Law.

[1991, c. 780, Pt. Y, §51 (AMD) .]

SECTION HISTORY

1983, c. 349, §4 (NEW). 1985, c. 785, SA61 (AMD). 1985, c. 785, SB30 (AMD). 1991, c. 780, §Y51 (AMD).

5 §1726. MEETINGS; COMPENSATION

(REPEALED)

SECTION HISTORY

1971, c. 239, §2 (NEW). 1971, c. 622, §17 (AMD). 1983, c. 349, §5 (RP).

5 §1727. PERSONNEL; SELECTION; DUTIES

(REPEALED)

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 489, §6 (AMD). 1983, c. 349, §6 (RP). 1983, c. 816, §B1 (RP).

5 §1727-A. CONFLICT OF INTEREST PROHIBITED

The director or any other employee of the division shall not be financially interested, directly or indirectly, in any insurer, agency or insurance transaction, except as a policyholder or claimant under a policy, nor shall the director or any other employee be licensed under Title 24-A, as an agent, broker, consultant or adjuster. [1983, c. 349, §7 (NEW).]

SECTION HISTORY

1983, c. 349, §7 (NEW).

5 §1728. POWERS AND DUTIES OF THE BOARD

(REPEALED)

SECTION HISTORY

1971, c. 239, §2 (NEW). 1977, c. 71, (AMD). 1979, c. 14, (AMD). 1983, c. 349, §8 (RP).

5 §1728-A. POWERS AND DUTIES OF THE DIRECTOR

1. Duties. The director shall provide insurance advice and services for all forms of insurance for State Government and any department or agency of State Government except for those departments or agencies and those types of insurance otherwise provided for by law through the self-insurance fund and to other entities designated as entitled to advice and services through the state-administered fund pursuant to section 1737. The director is responsible for the acquisition and administration of all insurance purchased by the State, including the authority to purchase insurance for the State for automobile, fire, liability and any other type of coverage necessary to protect the State from financial loss. The director may enter into contracts for various types of claims management services in order to ensure the most economically advantageous insurance protection in the operation of the State's insurance coverage program. In these regards, the director has the following duties:

A. To review annually the entire subject of insurance as it applies to all state property and activities and other persons pursuant to this section, and to provide to the Commissioner of Administrative and Financial Services a statement of its activities during the year ending the preceding June 30th. This report must include:

- (1) An evaluation of the state insurance program;
- (2) A complete statement of all types and costs of insurance in effect;
- (3) Names of agents and companies of record; and
- (4) Such other matters as the director determines appropriate and necessary or as the commissioner may request; [1993, c. 470, §1 (AMD).]

B. To recommend to the Commissioner of Administrative and Financial Services such insurance protection as the director considers necessary or desirable for the protection of all state property or activities or other insureds under this section; [1993, c. 470, §1 (AMD).]

C. Pursuant to programs approved by the Commissioner of Administrative and Financial Services, to provide insurance protection for property and liability in accordance with the Maine Tort Claims Act, Title 14, section 8116, and premises liability, when required by a state lease or private property approved by the Attorney General, by self-insured retention or purchase of insurance from companies or agents licensed to do business in this State, or by both, to effect the best possible contracts as to services, coverages and costs. The purchase of insurance under this section normally must be made upon competitive bidding, except that the director may, in appropriate circumstances, purchase insurance by negotiation; [1993, c. 470, §1 (AMD).]

D. To determine and review the values of property in which the State has an insurable or legal interest and recommend limits and types of insurance protection for that property; [1987, c. 778, §1 (AMD).]

E. To establish and promote safety and other loss prevention programs; [1987, c. 778, §1 (AMD).]

F. To receive and, with the assistance of the Attorney General, administer all claims for personal injury and property damage against the State; [1993, c. 470, §1 (AMD).]

G. With the assistance of the Attorney General, to pursue all claims against 3rd parties in all cases in which the State may be subrogated to the rights of injured employees or where damage to state property may have resulted from the negligence of a 3rd party; [1993, c. 470, §1 (AMD).]

H. To administer the funds established by sections 1731 and 1737. In performing the functions authorized by this chapter, the funds, the Commissioner of Administrative and Financial Services and the director are not subject to the provisions of Title 24-A; and [1993, c. 470, §1 (NEW).]

I. On or before December 31, 1996 and every 3 years thereafter, to submit to the Commissioner of Administrative and Financial Services a report on the availability and affordability of insurance advice and services to those entities participating in the state-administered fund pursuant to section 1737 and to make specific recommendations for the removal from the state-administered fund of those entities that do not qualify. [1993, c. 470, §1 (NEW).]

[1993, c. 470, §1 (AMD) .]

2. Appraisal. In case an agreement as to the amount of loss sustained to any building or property insured under this chapter can not be arrived at between the insured entity and the director, the loss must be referred to appraisal as provided by Title 24-A, section 3002.

[1993, c. 470, §1 (AMD) .]

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

When coverage is declined by the director, the department, agency or entity in charge of the risk may request that the director procure separate insurance from any authorized insurance company, and the premium for that separate insurance is a proper charge against the department, agency or entity responsible for the property.

[1993, c. 470, §1 (AMD) .]

4. Forms and rules. The director may prescribe forms of policies, proofs of loss and other forms and may adopt rules as are necessary or expedient for the proper administration of this chapter.

[1993, c. 470, §1 (AMD) .]

5. Actuarial review. Once every 3 years, and more frequently if determined prudent by the Commissioner of Administrative and Financial Services, the director shall arrange for a review of the reserves of the state-administered fund by a qualified actuary who is a member in good standing of the Casualty Actuarial Society. The actuary shall issue an opinion on the adequacy of reserves of the state-administered fund to cover the estimated ultimate liability of the state-administered fund. Costs for this service must be paid from the Risk Management Fund.

[1993, c. 470, §1 (NEW) .]

SECTION HISTORY

1983, c. 349, §9 (NEW). 1987, c. 778, §1 (AMD). 1989, c. 94, (AMD).
1991, c. 376, §21 (AMD). 1993, c. 470, §1 (AMD).

5 §1729. REMOVAL OF MEMBERS; VACANCIES

(REPEALED)

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §10 (RP).

5 §1730. RECORDS; AUDIT

The division shall keep a record of all its proceedings. [1983, c. 349, §11 (AMD).]

The division shall have an audit made of its accounts annually covering the last complete fiscal year by the Department of Audit. [1983, c. 349, §11 (AMD).]

The policies for all insurance placed shall be kept on file with the division. [1983, c. 349, §11 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §11 (AMD).

5 §1731. RESERVE FUND FOR SELF-INSURED RETENTION LOSSES

A reserve fund, referred to in this chapter as the "self-insurance fund," is created to indemnify the State or the State's designated payee for self-insured retention losses and related loss adjustment expenses from those perils insured against under a deductible or self-insured retention program, as recommended by the director and approved by the Commissioner of Administrative and Financial Services. With the approval of the commissioner, the self-insurance fund may be used for loss prevention programs administered by either the risk management division within the Bureau of General Services or the Bureau of Human Resources. The total amount of the self-insurance fund provided for loss prevention programs in any given year may not exceed 5% of the self-insurance fund as of July 1st of that fiscal year. The self-insurance fund is a continuing fund and does not lapse. Funds provided from the self-insurance fund to the Bureau of Human Resources are similarly nonlapsing and are carried forward through the Bureau of Human Resources' Dedicated Revenue Account. [1993, c. 470, §2 (AMD).]

As approved by the Commissioner of Administrative and Financial Services, up to 10% of the amount of the self-insurance fund as of July 1st of each fiscal year may be used to ensure the prompt payment of workers' compensation claims for state agencies as required by law. Any funds so transferred must be repaid to the self-insurance fund by use of a written agreement that specifies reimbursement within the same biennium in which the transfer was made. [1993, c. 470, §2 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §12 (AMD). 1985, c. 785, §C2 (RPR). 1989, c. 483, §A13 (AMD). 1989, c. 501, §P14 (AMD). 1989, c. 857, §20 (AMD). 1989, c. 875, §E6 (AMD). 1989, c. 878, §D1,2 (AMD). 1991, c. 528, §III11 (AMD). 1991, c. 591, §III11 (AMD). 1991, c. 528, §RRR (AFF). 1993, c. 470, §2 (AMD).

5 §1731-A. LIMITATION AND PROVISION FOR STOP-LOSS INSURANCE

Deductible or self-insured retention provisions hereunder may not exceed 25% of the self-insurance fund as of July 1st of the current fiscal year per occurrence with respect to any risk of loss. [1993, c. 470, §3 (AMD).]

The director may purchase such reinsurance of the deductible or self-insured retentions hereunder as he may deem necessary or desirable. The director may purchase such reinsurance protection from companies or agents licensed or approved by the Superintendent of Insurance to do business in the State. [1983, c. 349, §13 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §13 (AMD). 1985, c. 534, (AMD). 1989, c. 857, §21 (AMD). 1993, c. 470, §3 (AMD).

5 §1732. ADMINISTRATION

The self-insurance fund must be administered by the Commissioner of Administrative and Financial Services. The commissioner shall deposit the self-insurance fund with the Treasurer of State for investment. All proceeds of that investment accrue to the self-insurance fund. [1993, c. 470, §4 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §14 (AMD). 1985, c. 785, §A62 (AMD). 1991, c. 780, §Y52 (AMD). 1993, c. 470, §4 (AMD).

5 §1733. CAPITALIZATION OF SELF-INSURANCE FUND

The self-insurance fund is capitalized by legislative appropriations, payments from state departments and agencies, investment income accruing to the self-insurance fund and by such other means as the Legislature approves. [1993, c. 470, §5 (AMD).]

Payments to the self-insurance fund from its participants must be calculated on a pro rata basis as determined by the director and based on the prior claims experience of the departments or agencies. [1993, c. 470, §5 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §15 (AMD). 1989, c. 857, §22 (AMD). 1993, c. 470, §5 (AMD).

5 §1734. SELF-INSURANCE FUND LIMITATION

The self-insurance fund may not exceed 2% of the then current value of all state-insured or self-insured retention property protected by the self-insurance fund as determined by the director. [1993, c. 470, §6 (AMD).]

If the self-insurance fund reaches or exceeds the maximum amount specified in this section, payments to the self-insurance fund, as specified in section 1733, must cease and any excess must be transferred into the General Fund not later than the end of the first quarter of the next fiscal year. [1993, c. 470, §6 (AMD).]

Payments to the self-insurance fund may not begin again until such time as the amount in the self-insurance fund drops below the maximum amount specified in this section. [1993, c. 470, §6 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §16 (AMD). 1993, c. 470, §6 (AMD).

5 §1735. DEPLETION OF SELF-INSURANCE FUND

In the event that payments from the self-insurance fund should reduce it below \$1,000,000, the Commissioner of Administrative and Financial Services shall recommend to the Legislature that funds be appropriated to restore the self-insurance fund up to the maximum amount it had previously attained. [1993, c. 470, §7 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1971, c. 622, §§17-A (AMD). 1983, c. 349, §17 (AMD). 1993, c. 470, §7 (AMD).

5 §1736. PAYMENT OF LOSSES

Pursuant to the recommendation of the director, the Commissioner of Administrative and Financial Services may cause payments from the self-insurance fund or proceeds of insurance purchased in accordance with this chapter, or both, to be made available for repair or replacement of insured property and payment of losses and loss adjustment expenses. [1993, c. 470, §8 (AMD).]

SECTION HISTORY

1971, c. 239, §2 (NEW). 1983, c. 349, §18 (AMD). 1989, c. 857, §23 (AMD). 1993, c. 470, §8 (AMD).

5 §1737. STATE-ADMINISTERED FUND

1. Creation of state-administered fund. A reserve fund, referred to in this chapter as the "state-administered fund," is created to indemnify persons and entities eligible for participation pursuant to subsection 2 for losses and related loss adjustment expenses from those perils insured against under a deductible or self-insured retention program as recommended by the director and approved by the Commissioner of Administrative and Financial Services. With the approval of the commissioner, the state-administered fund may be used for loss prevention programs administered by the risk management division within the Bureau of General Services. The total amount of the state-administered fund provided for loss prevention programs in any given year may not exceed 5% of the state-administered fund as of July 1st of that fiscal year. The state-administered fund is a continuing fund and does not lapse.

[1993, c. 470, §9 (NEW) .]

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

- A. The director has been authorized to do so by law; [1993, c. 470, §9 (NEW) .]
- B. The Governor has approved that person or entity for insurance advice and service; [1993, c. 470, §9 (NEW) .]
- C. Coverage is unavailable or is offered only at unreasonable cost to that person or entity; and [1993, c. 470, §9 (NEW) .]
- D. That person or entity has demonstrated a strong public need for the services provided by that person or entity. [1993, c. 470, §9 (NEW) .]

[1993, c. 470, §9 (NEW) .]

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

[1993, c. 470, §9 (NEW) .]

4. Directed services. Notwithstanding the provisions of subsection 2, the director may provide insurance advice or services for family foster homes as defined in Title 22, section 8101, subsection 3; specialized children's homes, as defined in Title 22, section 8101, subsection 5; respite care providers as defined in Title 34-B, section 6201, subsection 2-A; the Casco Bay Island Transit District created by Private and Special Law 1981, chapter 22; the University of Maine System; the Maine Community College System; the Maine Maritime Academy; and the State's local workforce investment areas designated under the federal Workforce Investment Act of 1998, Public Law 105-220. The director may provide insurance services for public schools as defined in Title 20-A, section 1, subsection 24 if the provisions of subsection 2 are met. Notwithstanding subsection 2, the director may provide insurance advice for public schools.

[2007, c. 84, §1 (AMD) .]

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

[1993, c. 470, §9 (NEW) .]

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

[1993, c. 470, §9 (NEW) .]

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

[1993, c. 470, §9 (NEW) .]

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

[1993, c. 470, §9 (NEW) .]

SECTION HISTORY

1993, c. 470, §9 (NEW). 1993, c. 619, §1 (AMD). 1997, c. 46, §1 (AMD). 2003, c. 20, §002 (AMD). 2003, c. 114, §2 (AMD). 2003, c. 20, §004 (AFF). 2007, c. 84, §1 (AMD).

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