
ACTS, 1986. – Chaps. 697, 698.

Be it enacted, etc., as follows:

The department of revenue is hereby authorized and directed to conduct a study of the payments in lieu of taxes made by the commonwealth or by the Massachusetts water resources authority on account of publicly owned property in the Wachusett and the Sudbury watersheds. Said study shall determine the current amounts of such payments made to each city and town, the total of the current amounts of such payments, the amounts which would be paid to each city and town if the reimbursement were to be based on the current assessed valuation of such property, and the total of the amounts which would be paid if the reimbursement were so based. The department shall file said study with the house and senate committees on ways and means no later than June first, nineteen hundred and eighty-seven.

Approved January 7, 1987.

Chapter 697. AN ACT DESIGNATING A CERTAIN PARCEL OF LAND IN THE ALLSTON DISTRICT OF THE CITY OF BOSTON AS THE MARY HERTER MEMORIAL PUBLIC GARDEN.

Be it enacted, etc., as follows:

The public garden located within Christian A. Herter Park, in the Allston district of the city of Boston, shall be designated and known as the Mary Caroline Herter Memorial Public Garden in memory of the late widow of the former governor, Christian A. Herter, for whom the park is memorialized.

The metropolitan district commission is hereby authorized to continue its assistance on a regular basis to care and maintain said garden in cooperation with friends of the Mary Caroline Herter Memorial Public Garden, and to establish an account entitled the Mary Caroline Herter Memorial Garden Fund to receive donations and contributions from citizens, corporations, associations, nonprofit foundations and other public agencies with said proceeds to be designated to underwrite the annual operating costs of providing perpetual care to the Mary Caroline Herter Memorial Public Garden.

Approved January 7, 1987.

Chapter 698. AN ACT RELATIVE TO ISSUANCE OF DIRECTOR AND OFFICER LIABILITY INSURANCE BY THE CO-OPERATIVE CENTRAL BANK.

Be it enacted, etc., as follows:

SECTION 1. The directors of the Co-operative Central Bank, established by chapter forty-five of the acts of nineteen hundred and thirty-two, hereinafter called the incorporators, are hereby constituted a corporation under the name of the Co-operative Bank Insurance Fund, hereinafter referred to as the corporation. The successors from time to time of such directors shall, for the purposes of this act, be incor-

porators in place of their predecessors. The sole purposes of the corporation shall be to provide directors' and officers' liability insurance to co-operative banks and to their officers, directors, employees and agents, to issue fidelity and blanket bonds guaranteeing the due and faithful performance of duties by officers, directors, employees and other agents of co-operative banks, and to hold, invest, reinvest, and manage, one or more insurance funds, which shall include all property of the corporation, to be derived from voluntary membership therein made by co-operative banks now or hereafter during said term established under the laws of the commonwealth and subject to the provisions of chapter one hundred and seventy of the General Laws, hereinafter referred to as co-operative banks. As used in this act, the term "co-operative bank" or "co-operative banks" shall include the Co-operative Banks Employees Retirement Association formed under the provisions of section thirty of said chapter one hundred and seventy, the Co-operative Central Bank, the Massachusetts Co-operative Bank League, and the Co-operative Bank Investment Fund established by chapter four hundred and eighty-two of the acts of nineteen hundred and eighty-four.

SECTION 2. The officers of the corporation shall be a president, one or more vice-presidents, a treasurer, a clerk, a board of nineteen directors, and such other officers, if any, as may be authorized by the by-laws. The treasurer shall be required to give bond for the faithful performance of his duties in such sum and with such sureties as the by-laws may prescribe. The clerk shall be sworn and shall record all votes of the corporation in a book to be kept therefor. Each director of the corporation shall first have qualified as, and at all times shall be, a director of the Co-operative Central Bank. The office of director and any office other than director may be held by the same person. The directors shall be elected by the incorporators, initially at any time after the effective date of this act, and annually thereafter at a time fixed by the by-laws of the corporation, which time shall be at the annual meeting of the said Co-operative Central Bank or as soon thereafter as is feasible, but any director may be removed by vote of the incorporators at any meeting thereof. The officers of the corporation other than the directors shall be elected by such directors annually at a meeting held as soon after the election of the directors as is feasible, but any officer of the corporation other than a director may be removed by vote of such directors at any meeting thereof. The directors and other officers shall hold their several offices, unless sooner removed, until others are elected and qualified in their stead. Vacancies in the number of directors occurring at any time between the annual elections may be filled by election by the incorporators in the manner provided in the by-laws of the corporation. The existence of any vacancy, shall not invalidate any action of the board of directors if a majority of the full number fixed by the by-laws participates in such action, or is present at a meeting at which such action is taken. Vacancies in any of the offices other than that of director occurring at any time between the annual elections may be filled by election by the directors of the corporation.

The board of directors shall have full control of the business of the corporation except as herein specifically limited. By-laws for the conduct of the business of the corporation may be adopted by the directors of the corporation subject to the approval of the

incorporators. Such by-laws may provide for and fix the time and place of all meetings of the corporation and of the directors, define the duties of the officers, establish an executive committee with such powers while the board of directors is not in session, including the purchase and sale of securities and any or all other powers of the board of directors, as shall be therein specified, and may provide for such other officers and committees as may seem advisable.

Any action required or permitted to be taken at any meeting of the incorporators or directors may be taken without a meeting if all incorporators or all directors entitled to vote on the matter consent to the action in writing.

SECTION 3. The following words, as used in this act, unless the context otherwise requires or a different meaning is specifically prescribed, shall have the following meanings:–

"Insurance fund", any insurance fund established in accordance with the provisions of this act to provide one or more kinds of insurance coverage to co-operative banks participating in the fund.

"Insurance", formal self-insurance, commercial insurance or reinsurance or a combination thereof, covering any type of bond on risk of liability for a participating co-operative bank and, at the option of the corporation, of any affiliated institution of a participating co-operative bank, and of any officers, directors, employees or agents of a participating co-operative bank or affiliated institution who satisfy other reasonable criteria for coverage.

"Commissioner", the commissioner of insurance.

SECTION 4. The corporation may, upon complying with the provisions hereinafter set forth, establish one or more insurance funds if its board of directors has, at a meeting specially called for the purpose, voted so to do by a majority of two-thirds of its directors present at the meeting and voting, and if such vote has been ratified by a vote of a majority of the incorporators present and voting at a meeting duly called therefor.

SECTION 4A. (A) A proposed insurance fund shall file with the commissioner its application for a certificate of approval accompanied by a nonrefundable filing fee in the amount of one hundred dollars. The application shall include the group's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:

- (1) a copy of the articles of association, if any;
- (2) a copy of the by-laws of the proposed insurance fund;
- (3) a copy of the agreement between the insurance fund and each participating cooperative bank securing the payment of benefits;
- (4) designation of the initial board of directors and administrator;
- (5) the address in the commonwealth where the books and records of the fund shall be maintained at all times;
- (6) a pro forma financial statement on a form acceptable to the commissioner showing the financial ability of the fund to pay the obligations of its participating cooperative banks;
- (7) a documented agreement by each participant to the fund that at

least thirty-three per cent of the participants estimated annual net premium is payable the initial day of coverage afforded by the group; and

(8) a confirmation of any required reinsurance by a recognized carrier in an amount acceptable to the commissioner of insurance.

(B) To obtain and to maintain its certificate of approval an insurance fund shall comply with the following requirements as well as any other requirements established by law or regulation:

(1) specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the commissioner;

(2) an estimated annual standard premium of at least two hundred and fifty thousand dollars during an insurance fund's first year of operation; and

(3) a fidelity bond for the administrator in a form and amount prescribed by the commissioner of insurance.

(C) An insurance fund shall notify the commissioner of any change in the information required to be filed under subsection (A) or in the manner of its compliance with subsection (B) no later than thirty days after such change.

(D) The commissioner shall act upon a completed application for a certificate of approval within ninety days.

(E) The commissioner shall issue to the insurance fund a certificate of approval upon finding that the proposed insurance fund has met all requirements or the commissioner shall issue an order refusing such certificate setting forth reasons for such refusal upon finding that the proposed insurance fund does not meet all requirements.

Upon such refusal, the commissioner shall hold a hearing within thirty days after the date of such refusal, upon notice requesting such hearing by applicant within ten days of the date of said refusal.

(F) Each insurance fund shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against it in the commonwealth. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this commonwealth any obligation or liability or the group for benefits.

SECTION 4B. (A) The certificate of approval issued by the commissioner to an insurance fund authorizes the insurance fund to provide insurance coverage. The certificate of approval shall remain in effect until terminated at the request of the insurance fund or revoked by the commissioner pursuant to provisions of section sixteen.

(B) The commissioner shall not grant the request of any insurance fund to terminate its certificate of approval unless the insurance fund has insured or reinsured all incurred obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. Such obligation shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith.

Subject to the approval of the commissioner, a insurance fund may merge with another insurance fund only if the resulting insurance fund assumes in full all obligations of the merging insurance funds. The commissioner may hold a hearing on the merger and shall do so if any party, including a participant of either insurance fund, so requests.

SECTION 5. A certificate establishing an insurance fund shall not be issued to the corporation until there shall have been provided (a) a general expense guaranty fund as set forth in the following section and (b) a general insurance guaranty fund as set forth in section seven and until (c) a certificate, under oath of the treasurer, shall have been filed with the commissioner of insurance certifying that said general expense guaranty fund and said general insurance guaranty fund have been furnished, and (d) said commissioner shall, upon investigation, have made a finding that said requirements have duly been complied with.

SECTION 6. The general expense guaranty fund shall consist of not less than five hundred thousand dollars in cash, advanced to and placed at the risk of said corporation as a guaranty fund to be applied in payment of the expenses thereof, if and so far as the amounts contributed from the premium charges, shall prove insufficient to pay the expenses of said corporation. The original amount of such guaranty fund shall be fixed by the directors, with the approval of the state actuary, and the guaranty fund may be increased at any time thereafter by the directors, subject to the provisions of section eight. The amounts advanced as a general expense guaranty fund shall be evidenced by certificates of value, and the holders thereof shall be credited with interest thereon annually. If in any year ending December thirty-first the profits remaining, after setting aside amounts for surplus, shall be sufficient therefor, the directors shall from such profits reimburse said expense guaranty fund for any amounts theretofore drawn from it to defray expenses of the corporation; and if, after so reimbursing said fund, and after reimbursing the general insurance guaranty fund for amounts theretofore drawn from it to defray expenses of the corporation, and if, after so reimbursing said fund, and after reimbursing the general insurance guaranty fund for amounts theretofore drawn from it, the balance of profits shall be sufficient therefor, the directors shall pay to the holders of the certificates of said expense guaranty fund the interest accrued thereon, or such part thereof as the amount may suffice to cover. Said expense guaranty fund may be retired, with the approval of the commissioner of insurance, whenever in the opinion of the directors it is no longer required. The amount so advanced as an expense guaranty fund shall be repaid and the interest credited shall be paid only as above provided, and shall not be deemed a liability of the corporation in determining the solvency thereof.

SECTION 7. The general insurance guaranty fund mentioned in section five shall consist of not less than four million dollars in cash, advanced to and placed at the risk of the corporation by the Share Insurance Fund of the Co-operative Central Bank, which shall be applicable to the payment and satisfaction of all losses or other obligations arising out of policies or bonds if and whenever the liabilities of the corporation, including the insurance reserve, are in excess of its assets. The original amount of such general insurance guaranty fund shall be fixed by the directors with the approval of the state actuary, and the guaranty fund may be increased at any time thereafter by vote of the directors, subject to the provisions of section eight. The amounts advanced to such general insurance guaranty fund shall be represented by certificates of value, and the holders thereof shall be credited with interest thereon annually.

If in any year ending December thirty-first the profits remaining are sufficient therefor, after setting aside amounts for surplus, and reimbursing the general expense guaranty fund and said general insurance guaranty fund for all amounts theretofore drawn from them or either of them, and paying interest on the certificates representing the general expense guaranty fund, the directors may pay the interest accrued on said insurance guaranty certificates or such part thereof as the amount may suffice to cover. After the general expense guaranty fund has been retired as provided in section six, said general insurance guaranty fund may, with the approval of the commissioner of insurance, be retired by the directors as soon as the corporation shall have accumulated a surplus in excess of all its liabilities equal to the amount of such guaranty fund, including any interest accrued thereon remaining unpaid; and said insurance guaranty fund may, with like approval, be retired from time to time, in part, but the balance of such guaranty fund, including unpaid interest plus the surplus on hand, shall at no time be less than the amount of the original insurance guaranty fund. The amounts so advanced as an insurance guaranty fund shall be repaid and the interest credited thereon shall be paid only as above provided, and shall not be deemed a liability of the corporation in determining the solvency thereof.

SECTION 8. The initial contributions of the general expense guaranty fund referred to in section six and the general insurance guaranty fund referred to in section seven shall be made to the corporation by the Co-operative Central Bank from its Share Insurance Fund. Said contributions shall be in such amounts as the directors of the Co-operative Central Bank and the commissioner of banks determine. Certificates of value reflecting such contributions shall be issued to the Co-operative Central Bank or, at the direction of the Co-operative Central Bank, to its then members in accordance with their respective percentage interests in the Share Insurance Fund.

Notwithstanding any other provisions of this or any other law, the total amount of such contributions shall not exceed nineteen million five hundred thousand dollars; provided, that five of said nineteen million five hundred thousand dollars shall be deemed "transitional insurance" which, after a period of no more than five years from the effective date of this act, shall be retired and returned to the Share Insurance Fund, including any interest accrued thereon remaining unpaid to the Share Insurance Fund, to the extent that said transitional insurance was not necessary to pay for losses on blanket bonds or on directors' or officers' liability pursuant to this act.

Notwithstanding any provision of law to the contrary, all such contributions, not including the amount used for said transitional insurance, shall be considered proceeds within the meaning of section thirty-four of chapter four hundred and five of the acts of nineteen hundred and eighty-five and every bank shall be subject to the liability equal to ten per cent. Said liability shall be satisfied by the Co-operative Central Bank deducting, withholding and paying over to the commonwealth the full amount of said liability prior to making the initial contribution to said general expense guaranty fund or said general insurance guarantee fund. If all or any part of said transitional insurance is required for payment of losses on blanket bonds or on said directors'

and officers' liability insurance, such payment shall also be deemed proceeds within the meaning of said section thirty-four and the liability stated above shall also be imposed. The amounts received by the commonwealth pursuant to this section shall also be governed by section thirty-five of said chapter four hundred and five.

SECTION 9. The corporation may make and issue policies of insurance or bonds consistent with the purpose established in section one at rates determined by it with all the rights, powers and privileges and subject to all the duties, liabilities and restrictions in respect to the conduct of the business of insurance conferred or imposed by this act or general laws relating to domestic mutual fire insurance companies, so far as the same are applicable and except as is otherwise provided herein. The corporation may decline particular classes of risks or reject any particular application. The corporation may enter into reinsurance contracts upon such terms and conditions as its board of directors may approve.

SECTION 10. The funds of the corporation, whether arising from premiums, bonds, guaranty funds, or from the income thereof, and whether constituting insurance reserve or surplus, shall be invested in the same classes of securities and, notwithstanding any limitations contained in section fourteen of chapter one hundred and sixty-seven E with respect to the total obligation of any one person in the same manner set forth in chapter one hundred and sixty-seven F and, except that such funds may be invested without regard for limitation in the Co-operative Bank Investment Fund established by Chapter 482 of the Acts of 1984.

SECTION 11. The aggregate amount of insurance or bonds which may be issued or in force at any time to any one bank under insurance policies issued by the corporation shall not exceed an aggregate amount, exclusive of reinsurance, which the directors may approve.

SECTION 12. No policy or bond shall be issued except to a co-operative bank, an affiliate thereof, as determined by the board of directors.

SECTION 13. In each fiscal year, participating co-operative banks shall pay as part of its premium to the corporation to be applied by the corporation to the maintenance of each fund in which they participate, a sum equal to its pro rata share of the total expenditures authorized for each year in the annual budget and any supplement or supplements thereto which the corporation shall have adopted for said funds. Such sum shall be apportioned by the corporation among the participating co-operative banks in proportion to their premium, or on such other basis as the corporation shall deem equitable and proper, and the said banks shall be assessed therefor in accordance with such apportionment.

SECTION 14. The corporation may also borrow money to effect the purposes of this act and any notes or other indebtedness of the corporation not in default shall be legal investments for co-operative banks and the Co-operative Central Bank.

SECTION 15. Every participating co-operative bank shall upon request by the corporation, pay to it forthwith such sums as may be so requested, provided that the sums so requested to be paid hereunder to the corporation by any participating co-operative bank shall not exceed, in the aggregate, five per cent of all amounts paid to it as premiums on insurance policies during the fiscal year next preceding the latest request made as aforesaid. The sums so paid to the corporation shall be held by it as a guaranty for all obligations on policies of insurance or bonds written for participating co-operative banks.

SECTION 16. The corporation may at any time discontinue the issuing of insurance policies and bonds if its board of directors has, at a meeting duly called for the purpose, voted so to do by a majority of two-thirds of its directors present at the meeting and voting. A copy of the vote to discontinue said business, certified to by the clerk of the corporation and sworn to by its president or vice-president and its treasurer or assistant treasurer, shall be filed with the commissioner of banks and with the commissioner of insurance. The corporation may reinsure all outstanding policies and bonds with the approval of the commissioner of insurance in any insurance company if it makes provision satisfactory to the commissioner of insurance for carrying out with reasonable convenience to policyholders its existing contracts.

Within one year of the vote to discontinue, or such longer time as the commissioner of banks shall deem appropriate, the balance of the contributions described in section eight together with earnings or interest thereon and all other assets not necessary for the orderly conclusion of its affairs shall be distributed by the corporation to members of the Co-operative Central Bank, or their successors in interest, in proportion to the percentage interest in the Share Insurance Fund on the date or dates such contribution or contributions were made.

SECTION 17. The commissioner of insurance shall, at least once in three years, and whenever he deems it expedient, personally or by deputy or assistant, examine the corporation. At such examination he shall have free access to the vaults, books and papers, and shall thoroughly inspect and examine the affairs of the corporation to ascertain its condition, its transactions, its ability to fulfill its obligations, and whether it has complied with all the provisions of law applicable to it. He shall preserve in a permanent form a full record of his proceedings, including a statement of the condition of each insurance fund of the corporation.

Within thirty days after the end of its fiscal year, the corporation shall file with the general court a statement of its condition, including a balance sheet which presents fairly, in accordance with generally accepted accounting principles, including required footnote disclosures, its condition as of the last business day of its fiscal year, with comparative figures as to the end of the previous fiscal year.

Approved January 7, 1987.

EMERGENCY LETTER: January 13, 1987 @ 4:36 P.M.