

Chapter 73

(Senate Bill 749)

AN ACT concerning

Maryland Automobile Insurance Fund – Operational Changes

FOR the purpose of providing that the Maryland Automobile Insurance Fund is not subject to certain provisions of State law; providing that the Fund is subject to specified provisions of State law; providing that the Fund is independent of all State units; altering the composition, powers, and duties of the Board of Trustees of the Fund; requiring the Governor to appoint all members of the Board; requiring the Governor to consider the geographic and demographic diversity of the State in appointing individuals to the Board; altering the term of a member of the Board; altering the manner in which vacancies on the Board are filled; repealing certain provisions of law relating to a deemed resignation of a member of the Board; authorizing the Governor to remove a member of the Board for certain reasons; altering the compensation and reimbursement to which a member of the Board is entitled; providing that a member of the Board is not required to take compensation under certain circumstances; repealing a provision of law that requires compensation of the Executive Director of the Fund to be determined with the approval of the Governor; requiring the Board to employ certain attorneys for certain purposes; removing employees of the Fund from the State Personnel Management System except under certain circumstances; requiring the Executive Director to appoint and remove employees in accordance with certain policies; requiring the two members of the Board who serve on a certain financial committee to have certain expertise; repealing provisions of law that authorize the Legislative Auditor to conduct certain audits of the Fund; requiring a certain audit committee to require the Fund's internal auditors to conduct certain audits; exempting the Fund from certain State procurement law; clarifying that the employees of the Fund are authorized to participate in the State's health insurance program; clarifying that the employees of the Fund are eligible to participate in the State's pension system; providing for the initial terms of members of the Board; making stylistic, conforming, and clarifying changes; providing for the effective dates of this Act; and generally relating to the Maryland Automobile Insurance Fund.

BY repealing and reenacting, with amendments,
Article – Insurance
Section 20–201 through 20–204 and 20–303(a)
Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY repealing

Article – Insurance
 Section 20–304
 Annotated Code of Maryland
 (2011 Replacement Volume and 2012 Supplement)

BY adding to

Article – Insurance
 Section 20–304
 Annotated Code of Maryland
 (2011 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement
 Section 11–203(a)(1)(ix) through (xix)
 Annotated Code of Maryland
 (2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – State Personnel and Pensions
 Section 2–511 and 23–201(a)
 Annotated Code of Maryland
 (2009 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

20–201.

(a) There is a Maryland Automobile Insurance Fund.

(B) THE FUND IS INDEPENDENT OF ALL STATE UNITS.

[(b)] (C) The Fund is a member of the Property and Casualty Insurance Guaranty Corporation.

[(c)] (D) **(1) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE FUND IS SUBJECT TO THE PROVISIONS OF THIS ARTICLE.**

(2) EXCEPT AS PROVIDED IN ~~PARAGRAPHS (2) AND~~ PARAGRAPH (3) OF THIS SUBSECTION, THE FUND IS NOT SUBJECT TO ANY LAW, INCLUDING § 6–106 OF THE STATE GOVERNMENT ARTICLE, THAT AFFECTS GOVERNMENTAL UNITS.

~~(2) In addition to the provisions of this title, the Fund is subject to Title 2, Subtitle 5 of this article.~~

(3) THE FUND IS SUBJECT TO:

(I) TITLE 10, SUBTITLE 6, PART III OF THE STATE GOVERNMENT ARTICLE;

(II) TITLE 10, SUBTITLE 5 OF THE STATE GOVERNMENT ARTICLE;

(III) THE MARYLAND PUBLIC ETHICS LAW;

(IV) TITLE 12 OF THE STATE GOVERNMENT ARTICLE; AND

(V) TITLE 5, SUBTITLE 3 OF THE STATE PERSONNEL AND PENSIONS ARTICLE; AND

~~(VI) §§ 2-205, 2-209, AND 4-116 OF THIS ARTICLE.~~

(4) PARAGRAPH ~~(1)~~ (2) OF THIS SUBSECTION DOES NOT AFFECT THE EXEMPTION FROM PROPERTY TAX UNDER § 7-210 OF THE TAX – PROPERTY ARTICLE.

20-202.

(a) There is a Board of Trustees of the Fund.

(b) (1) The Board of Trustees consists of [13] 9 members [.

(2) Of the 13 members:

(i) seven shall be] appointed by the Governor with the advice and consent of the Senate[;

(ii) five shall be appointed by the Board of Directors; and

(iii) one shall be the Executive Director].

[(3) Except as provided in § 20-203(a)(3) of this subtitle, the Executive Director may vote on all matters before the Board of Trustees.]

(2) OF THE NINE MEMBERS:

(I) AT LEAST THREE SHALL HAVE INSURANCE INDUSTRY EXPERTISE; AND

(II) AT LEAST TWO SHALL HAVE FINANCIAL MANAGEMENT EXPERTISE.

(3) OF THE MEMBERS DESCRIBED IN PARAGRAPH (2)(I) OF THIS SUBSECTION, AT LEAST ONE SHALL BE APPOINTED FROM A LIST OF TWO OR MORE INDIVIDUALS RECOMMENDED BY THE BOARD OF DIRECTORS.

(c) A member [appointed by the Governor] may not be actively affiliated with an insurance agency, insurance producer, insurer, or premium finance company that does business with the Fund.

(d) **(1)** [At least three of the five members appointed by the Board of Directors] **EACH MEMBER** shall be [residents] **A RESIDENT** of the State.

(2) IN DECIDING WHICH INDIVIDUALS TO APPOINT, THE GOVERNOR, TO THE EXTENT PRACTICABLE, SHALL CONSIDER THE GEOGRAPHIC AND DEMOGRAPHIC, INCLUDING RACE AND GENDER, DIVERSITY OF THE STATE.

(E) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD OF TRUSTEES SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND CONSTITUTION.

[(e)] **(F) (1)** [A member appointed by the Governor serves at the pleasure of the Governor.

(2) The term of a member [appointed by the Board of Directors] is [4] 5 years [and begins on September 1].

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD OF TRUSTEES ON OCTOBER 1, 2013.

(3) At the end of a term, a member [appointed by the Board of Directors] continues to serve until a successor is [chosen] **APPOINTED** and qualifies.

(4) A MEMBER MAY NOT SERVE FOR MORE THAN:

(I) TWO FULL TERMS; OR

(II) A TOTAL OF 10 YEARS.

(5) If a member **OF THE BOARD OF TRUSTEES** [appointed by the Board of Directors] ceases to be a member of the Board [of Trustees], the [Board of Directors] **GOVERNOR** shall appoint a successor for the unexpired term.

[(5) A member appointed by the Board of Directors is deemed to have resigned, causing a vacancy on the Board of Trustees, if:

(i) the member was employed by an Association member or insurance trade association when the member's term on the Board of Trustees began; and

(ii) for any reason, the member's employment with the Association member or insurance trade association ends during the member's term on the Board of Trustees.]

[(f) **(G)** [(1) The Board of Trustees shall choose a [chairman] **CHAIR** from among its members.

[(2) For each successive term, the position of chairman shall alternate between a gubernatorial appointee and an Association appointee.

(3) The Executive Director may not be the chairman of the Board of Trustees.]

[(g) **(H)** **THE GOVERNOR MAY REMOVE A MEMBER OF THE BOARD OF TRUSTEES FOR INCOMPETENCE OR MISCONDUCT.**

(I) (1) Each member of the Board of Trustees is entitled to:

[(1) **(I)** [per diem compensation set by the Board of Public Works for each day actually engaged in the discharge of official duties, if the member is not otherwise an officer or employee of the State] **REASONABLE COMPENSATION:**

1. IN THE FORM OF SALARY FOR WORK PERFORMED FOR THE BENEFIT OF THE FUND; AND

2. AS PROVIDED IN THE BUDGET OF THE BOARD OF TRUSTEES; and

[(2) **(II)** reimbursement for expenses:

1. [under the Standard State Travel Regulations,] INCURRED IN THE PERFORMANCE OF THE MEMBER'S DUTIES; AND

2. as provided in the budget of the Board of Trustees.

(2) NOTHING IN PARAGRAPH (1)(I) OF THIS SUBSECTION REQUIRES A MEMBER OF THE BOARD OF TRUSTEES TO TAKE COMPENSATION IF THE MEMBER HAS A CONFLICT OF INTEREST WITH OTHER EMPLOYMENT THAT PRECLUDES THE MEMBER FROM TAKING COMPENSATION FOR WORK PERFORMED FOR THE BENEFIT OF THE FUND.

[(h)] (J) The Board of Trustees:

(1) shall [formulate policy for the Fund] ADOPT RULES, BYLAWS, AND PROCEDURES; AND

(2) MAY ADOPT ANY POLICY TO CARRY OUT THIS TITLE.

20–203.

(a) (1) The Board of Trustees shall:

(I) appoint the Executive Director of the Fund [with the approval of the Governor]; AND

(II) EMPLOY ATTORNEYS TO ADVISE AND REPRESENT THE FUND IN ALL LEGAL MATTERS AND, WHERE NECESSARY, TO SUE OR DEFEND SUITS IN THE NAME OF THE FUND.

(2) The Executive Director serves at the pleasure of the Board of Trustees.

(3) [The incumbent Executive Director may not vote on the choice of a successor.

(4) If the Board of Trustees fails to agree on a successor **EXECUTIVE DIRECTOR**, the Governor shall appoint the successor.

(b) (1) The Executive Director:

(i) is the administrative head of the Fund; and

(ii) shall exercise the powers and perform the duties conferred on the Fund by this title, except for those powers and duties conferred on the Board of Trustees.

(2) The Board of Trustees shall advise the Executive Director on the exercise of the powers and duties conferred on the Executive Director by this title.

(c) The Board of Trustees shall determine the compensation of the Executive Director [with the approval of the Governor].

~~20-204.~~

~~(a) [(1) Except as provided in paragraph (2) of this subsection or otherwise by law, the Executive Director shall appoint and remove staff of the Fund in accordance with the provisions of the State Personnel and Pensions Article.~~

~~(2) Positions that the Executive Director designates with the approval of the Board of Trustees as technical or professional positions are in the executive service, management service, or are special appointments of the skilled service or the professional service in the State Personnel Management System.]~~

~~(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EMPLOYEES OF THE FUND ARE NOT IN THE STATE PERSONNEL MANAGEMENT SYSTEM.~~

~~(2) A SKILLED SERVICE EMPLOYEE OF THE FUND HIRED BEFORE OCTOBER 1, 2013, IN A NONPROFESSIONAL OR NONTECHNICAL POSITION SHALL REMAIN IN THE SKILLED SERVICE IN THE STATE PERSONNEL MANAGEMENT SYSTEM OR ITS EQUIVALENT AS LONG AS THE EMPLOYEE REMAINS IN A NONPROFESSIONAL OR NONTECHNICAL POSITION WITH THE FUND.~~

~~(3) THE EXECUTIVE DIRECTOR SHALL APPOINT AND REMOVE EMPLOYEES OF THE FUND IN ACCORDANCE WITH THE POLICIES OF THE BOARD OF TRUSTEES.~~

~~[(3)] (4) Notwithstanding any other provision of law, the Executive Director may appoint claims adjusters, attorneys, and other necessary personnel directly as employees or on a contract basis.~~

~~(b) The Executive Director shall determine and administer the compensation of the [personnel] EMPLOYEES of the Fund [designated under subsection (a)(2) of this section] with the approval of the Board of Trustees.~~

~~(c) Except as otherwise provided in this subtitle, an employee of the Fund is not subject to any law, regulation, or executive order governing State employee compensation, including furloughs, salary reductions, and any other General Fund cost-saving measure.~~

20-303.

(a) (1) A financial management committee of the Fund shall manage and invest all moneys collected by or for the Fund through premiums, earnings from investments, or from other sources.

(2) The financial management committee consists of the Executive Director and two members of the Board of Trustees [whom] **WHO HAVE FINANCIAL MANAGEMENT EXPERTISE, CHOSEN BY** the Board of Trustees [chooses].

[(3) Of the two members from the Board of Trustees:

(i) one shall be chosen from the members appointed by the Governor; and

(ii) one shall be chosen from the members appointed by the Association.]

[20–304.

(a) The Legislative Auditor:

(1) may conduct fiscal audits and compliance audits of the accounts and transactions of the Fund each year instead of every 2 years; and

(2) shall advise officials of the Fund whether audits will be conducted each year or every 2 years.

(b) (1) If an independent auditor conducts a fiscal audit of the Fund, the Legislative Auditor may not duplicate the fiscal audit for the same period.

(2) If, at the request of the Fund, the Legislative Auditor conducts the fiscal audit instead of an independent auditor, the Legislative Auditor may charge the Fund for the cost of the fiscal audit.

(c) An audit conducted in accordance with this section is in addition to and not instead of any audit or regulatory authority of the Commissioner.]

20–304.

(A) (1) AN AUDIT COMMITTEE, COMPOSED OF MEMBERS OF THE BOARD OF TRUSTEES AND THE EXECUTIVE DIRECTOR, SHALL REQUIRE THE FUND’S INTERNAL AUDITOR TO CONDUCT FISCAL COMPLIANCE AND FISCAL AUDITS OF THE ACCOUNTS AND TRANSACTIONS OF THE FUND EACH YEAR.

(2) A FISCAL COMPLIANCE AUDIT SHALL:

(I) EXAMINE FINANCIAL TRANSACTIONS AND RECORDS AND INTERNAL CONTROLS;

(II) EVALUATE COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS; AND

(III) EXAMINE ELECTRONIC DATA PROCESSING OPERATIONS.

(B) IF AN INDEPENDENT AUDITOR CONDUCTS A FISCAL AUDIT OF THE FUND, THE AUDIT COMMITTEE SHALL DIRECT THE FUND'S INTERNAL AUDITORS NOT TO DUPLICATE THE FISCAL AUDIT FOR THE SAME PERIOD.

Article – State Finance and Procurement

11-203.

(a) Except as provided in subsection (b) of this section, this Division II does not apply to:

(1) procurement by:

(ix) [the Maryland Automobile Insurance Fund;

(x)] the Maryland Historical Trust for:

1. surveying and evaluating architecturally, archeologically, historically, or culturally significant properties; and

2. other than as to architectural services, preparing historic preservation planning documents and educational material;

[(xi)] (X) the University of Maryland, for University College Overseas Programs, if the University adopts regulations that:

1. establish policies and procedures governing procurement for University College Overseas Programs; and

2. promote the purposes stated in § 11-201(a) of this subtitle;

[(xii)] (XI) the Department of Business and Economic Development, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of Maryland and the tourism industry where there will be a private sector contribution to the project of not less than 50% of the total cost of the project, if the project is reviewed by the Attorney General and

approved by the Secretary of Business and Economic Development or the Secretary's designee;

[(xiii)] **(XII)** the Rural Maryland Council;

[(xiv)] **(XIII)** the Maryland State Lottery Agency, for negotiating and entering into private sector cooperative marketing projects that directly enhance promotion of the Maryland State Lottery and its products, if the cooperative marketing project:

1. provides a substantive promotional or marketing value that the lottery determines acceptable in exchange for advertising or other promotional activities provided by the lottery;

2. does not involve the advertising or other promotion of alcohol or tobacco products; and

3. is reviewed by the Attorney General and approved by the Maryland Lottery Director or the Director's designee;

[(xv)] **(XIV)** the Maryland Health Insurance Plan established under Title 14, Subtitle 5 of the Insurance Article;

[(xvi)] **(XV)** the Maryland Energy Administration, when negotiating or entering into grants or cooperative agreements with private entities to meet federal specifications or solicitation requirements related to energy conservation, energy efficiency, or renewable energy projects that benefit the State;

[(xvii)] **(XVI)** the Maryland Developmental Disabilities Administration of the Department of Health and Mental Hygiene for family and individual support services, and individual family care services, as those terms are defined by the Department of Health and Mental Hygiene in regulation;

[(xviii)] **(XVII)** the Department of General Services for the renovation of a structure that:

1. was built during the 18th or 19th century; and

2. is listed in or eligible for listing in the National Register of Historic Places; and

[(xix)] **(XVIII)** the Department of Natural Resources, for negotiating or entering into grants, agreements, or partnerships with nonprofit entities related to conservation service opportunities;

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Insurance

20–204.

(a) [(1) Except as provided in paragraph (2) of this subsection or otherwise by law, the Executive Director shall appoint and remove staff of the Fund in accordance with the provisions of the State Personnel and Pensions Article.]

(2) Positions that the Executive Director designates with the approval of the Board of Trustees as technical or professional positions are in the executive service, management service, or are special appointments of the skilled service or the professional service in the State Personnel Management System.]

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EMPLOYEES OF THE FUND ARE NOT IN THE STATE PERSONNEL MANAGEMENT SYSTEM.

(2) A SKILLED SERVICE EMPLOYEE OF THE FUND HIRED BEFORE JULY 1, 2013, IN A NONPROFESSIONAL OR NONTECHNICAL POSITION SHALL REMAIN IN THE SKILLED SERVICE IN THE STATE PERSONNEL MANAGEMENT SYSTEM OR ITS EQUIVALENT AS LONG AS THE EMPLOYEE REMAINS IN A NONPROFESSIONAL OR NONTECHNICAL POSITION WITH THE FUND.

(3) THE EXECUTIVE DIRECTOR SHALL APPOINT AND REMOVE EMPLOYEES OF THE FUND IN ACCORDANCE WITH THE POLICIES OF THE BOARD OF TRUSTEES.

[(3)] (4) Notwithstanding any other provision of law, the Executive Director may appoint claims adjusters, attorneys, and other necessary personnel directly as employees or on a contract basis.

(b) The Executive Director shall determine and administer the compensation of the [personnel] EMPLOYEES of the Fund [designated under subsection (a)(2) of this section] with the approval of the Board of Trustees.

(c) Except as otherwise provided in this subtitle, an employee of the Fund is not subject to any law, regulation, or executive order governing State employee compensation, including furloughs, salary reductions, and any other General Fund cost-saving measure.

Article – State Personnel and Pensions

2-511.

(a) This section applies to employees of:

- (1) the Maryland Environmental Service;
- (2) the Northeast Maryland Waste Disposal Authority; [and]
- (3) the Baltimore Metropolitan Council; **AND**
- (4) **THE MARYLAND AUTOMOBILE INSURANCE FUND.**

(b) Subject to the regulations adopted under § 2-503 of this subtitle, an employee or, while receiving an allowance under the Employees' Retirement System of the State of Maryland or the Employees' Pension System of the State of Maryland, an employee's surviving spouse:

(1) may enroll and participate in the health insurance or other benefit options established under the Program; and

(2) except as provided in subsection (d) of this section, is subject to the same terms and conditions as those provided under § 2-507 of this subtitle.

(c) While receiving an allowance under the Employees' Retirement System of the State of Maryland or the Employees' Pension System of the State of Maryland, a former employee or a former employee's surviving spouse or dependent child:

(1) may enroll and participate in the health insurance benefit options established under the Program; and

(2) except as provided in subsection (d) of this section, is subject to the same terms and conditions as those provided under § 2-508 of this subtitle, with the employee's service with the Maryland Environmental Service, Northeast Maryland Waste Disposal Authority, [and] the Baltimore Metropolitan Council, **AND THE MARYLAND AUTOMOBILE INSURANCE FUND** being included as part of the employee's State service.

(d) For each participant under this section, the Maryland Environmental Service, the Northeast Maryland Waste Disposal Authority, [and] the Baltimore Metropolitan Council, **AND THE MARYLAND AUTOMOBILE INSURANCE FUND** or any successor agency, shall pay to the State the respective employer share of the cost of the Program based on the State subsidy allowed under this subtitle.

23-201.

(a) Except as provided in subsection (b) of this section, §§ 23–203 through 23–205 of this subtitle apply only to:

- (1) a regular employee whose compensation is provided by State appropriation or paid from State funds;
- (2) an appointed or elected official of the State, including:
 - (i) a clerk of the circuit court;
 - (ii) a register of wills;
 - (iii) a State's Attorney; and
 - (iv) a sheriff;
- (3) an employee or official of a participating governmental unit who is eligible to participate under Title 31, Subtitle 1 of this article;
- (4) an employee of the Office of the Sheriff of Baltimore City;
- (5) an additional employee or agent of the State Racing Commission authorized by § 11–207 of the Business Regulation Article;
- (6) a permanent employee of the board of supervisors of elections of a county;
- (7) a full-time master in chancery or in juvenile causes who is appointed on or after July 1, 1989, in any county by the circuit court for that county;
- (8) an employee of the Maryland Environmental Service who is a member of the Employees' Pension System on June 30, 1993, or transfers from the Employees' Retirement System on or after July 1, 1993;
- (9) a former Baltimore City jail employee who became an employee of the Baltimore City Detention Center and a member of the Employees' Pension System on July 1, 1991;
- (10) a nonfaculty employee of the Baltimore City Community College who:
 - (i) is a member of the Employees' Pension System on October 1, 2002;
 - (ii) transfers from the Employees' Retirement System on or after October 1, 2002;

(iii) transfers from the Teachers' Pension System in accordance with § 23–202.1 of this subtitle; or

(iv) becomes an employee of the Baltimore City Community College on or after October 1, 2002;

(11) a court reporter for the Circuit Court for Charles County who is a member of the Employees' Pension System on July 1, 1994, or transfers from the Employees' Retirement System on or after July 1, 1994;

(12) a staff employee of the University System of Maryland, Morgan State University, or St. Mary's College who is:

(i) a member of the Employees' Pension System on January 1, 1998, or transfers from the Employees' Retirement System on or after January 1, 1998; or

(ii) a staff employee of the University System of Maryland, Morgan State University, or St. Mary's College who becomes an employee on or after January 1, 1998;

(13) on or after the date that the Board of Education of Kent County begins participation in the Employees' Pension System, a supportive service employee of the Board of Education of Kent County;

(14) an employee of the Town of Oakland on or after the date that the Town of Oakland begins participation in the Employees' Pension System;

(15) an employee of the City of Frostburg on or after the date that the City of Frostburg begins participation in the Employees' Pension System;

(16) an employee of the Town of Berwyn Heights on or after the date that the Town of Berwyn Heights begins participation in the Employees' Pension System;

(17) an employee of the Town of Sykesville on or after the date that the Town of Sykesville begins participation in the Employees' Pension System; [and]

(18) an employee of the Town of University Park on or after the date that the Town of University Park begins participation in the Employees' Pension System; AND

(19) AN EMPLOYEE OF THE MARYLAND AUTOMOBILE INSURANCE FUND ON OR AFTER THE DATE THAT THE MARYLAND AUTOMOBILE INSURANCE FUND BEGINS PARTICIPATION IN THE EMPLOYEE'S PENSION SYSTEM.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That:

(a) The term for each member of the Board of Trustees of the Fund serving on September 30, 2013, expires effective October 1, 2013.

(b) The initial terms of members of the Board of Trustees of the Fund shall begin on October 1, 2013, and expire as follows:

- (1) two ~~members~~ in 2015;
- (2) two in 2016;
- (3) three ~~members~~ in 2017; and
- (4) two in 2018.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That Sections 1 and 3 of this Act shall take effect October 1, 2013.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect July 1, 2013.

Approved by the Governor, April 9, 2013.