



**House
Legislative
Analysis
Section**

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COLLEGE SELF-INSURANCE POOL

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House Bill 4407 (Substitute H-1)
First Analysis (5-18-87)

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Sponsor: Rep. Burton Leland
Committee: Colleges and Universities

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THE APPARENT PROBLEM:

The state's colleges and universities have by no means escaped the liability insurance problems that have afflicted physicians, restaurants, municipalities, and others in recent years. The story is familiar: sharply rising premiums combined with some forms of coverage becoming unavailable at any cost. Adequate coverage for trustees and officers has become particularly hard to come by. Colleges are relying increasingly on self-insurance while paying more for what reduced insurance coverage remains obtainable. One example is that of Wayne State University whose premium for primary coverage general liability insurance increased 143 percent from 1984-85 to 1985-86, while coverage for participants in athletic competitions became unavailable, and the cost of umbrella coverage for amounts in excess of that covered by the primary coverage increased 475 percent for protection that decreased from \$25 million to \$10 million. The school's efforts to obtain coverage for athletic events have been unsuccessful; it conducts those events without insurance and requires participants to sign a waiver.

One way to solve the problems of insurance cost and availability, especially in a time when many schools are having to self-insure, is to form an insurance pool that enables participants to spread risk among themselves, encourages them to undertake efforts to reduce risks, provides them with more financial control than is otherwise to be had in the fluctuating commercial insurance market, and, perhaps most importantly, enables participants to obtain adequate "excess" insurance (that is, insurance that applies when losses exceed a given amount in a given period) at affordable rates.

It appears that the constitution grants state colleges and universities sufficient autonomy to form a pool absent statutory authority. Although the schools have sought the attorney general's opinion on whether legislative approval is needed to form a pool, the schools are in the meantime asking for legislation sanctioning the formation of a state colleges and universities insurance pool. The matter is urgent to them, because eight of the 13 schools will have to renew or replace their current coverages by July 1, 1987.

THE CONTENT OF THE BILL:

The bill would create the State Colleges and Universities Self-Insurance Act. It would authorize the governing boards of two or more baccalaureate institutions to create and operate an actuarially sound group self-insurance pool to provide coverage for certain risks. Permissible coverage would be for casualty, property, automobile, surety and fidelity, umbrella and excess coverage, and medical malpractice. The pool could not cover risks for life, health, or other personal lines, or for worker's compensation or medical malpractice relating to surgical, inpatient overnight care, or care provided in a hospital. The pool could not be used to satisfy the indemnification reserve fund requirements under Public Act 315 of 1977. The pool's creation, operation, and liabilities would not be obligations of the state.

Formation and Operation

Only one pool could be established under the bill, and it would have to be formed as a nonprofit corporation. Participation would be available to each institution of higher education that agreed to the terms and conditions contained in the participation agreement to be drawn up by the governing boards of the institutions. Each institution participating in the pool would exercise equal powers and have equal representation on the pool's governing body, which would consist of a representative appointed by each institution's governing board. A representative would report to the governing board at least annually.

The pool would be formed and governed by an agreement between the participating institutions. That agreement would have to contain: the method of calculating required financial contributions, the method of establishing coverages, terms and conditions of withdrawal from and dissolution of the pool, rights of participating institutions, and other provisions considered necessary or appropriate by the signatories.

A pool would have to do all of the following: establish initial and subsequent financial contributions based upon actuarial recommendations; endeavor to operate effective risk management and loss control programs for and by participating institutions; and, establish and maintain reserves which, together with any authorized assessments, were expected to be sufficient to meet the pool's financial obligations. Money in the pool could be separated into separate funds or accounts.

A pool would have the powers granted to it by the bill and the agreement, but powers granted by agreement could not be inconsistent with the bill and would have to be "necessary and convenient". A pool could bind its participating institutions only to the extent provided by the agreement. A pool could not engage in a business or activity other than providing coverage for risks of its participants. It would not be an insurer and its operation would not be considered insurance or surety business.

A pool's assets would have to be invested according to prudent investment practices and such investments would have to be disclosed to all participating institutions annually.

Regulation

Annual reports would have to be made to participating institutions and the state insurance commissioner. Those reports would be audited financial statements certified by an independent certified public accountant detailing the financial position, operating results, and risk management programs of the pool, plus a certification by an independent actuary that the reserves, together with authorized assessments, were sufficient to meet the pool's obligations to its participants.

Under certain conditions the insurance commissioner could perform examinations to assure that the pool was in a sound financial condition and operating in accordance with

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the bill. The examination could be undertaken if the pool failed to provide the required audited financial statement or actuary certification, or if the audit and actuary certification showed that the pool's reserves, together with authorized assessments, were inadequate to meet its financial obligations. The pool would have to respond to any commissioner recommendations within 120 days after receiving them, and detail any corrective action to be taken with respect to the pool's financial condition.

If the commissioner deemed the pool's response to be inadequate, he or she would report his or her findings along with the pool's response to the participants' governing boards, the legislature, and the governor.

The pool's financial records would be available to the auditor general.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (5-18-87)

ARGUMENTS:

For:

The bill would provide the regulatory framework for Michigan's state colleges and universities to form an insurance pool, and enjoy the advantages of having better coverage available at better prices. Cost savings would be realized through risk sharing, successful efforts to reduce risks, and availability of excess insurance coverage at a better price. The bill would safeguard the pool by emphasizing actuarial soundness throughout, requiring regular evaluations by outside auditors and actuaries, and providing for a reasonable degree of insurance commissioner oversight in the event that those evaluations reveal problems. Although some may wish to allow recent liability law reforms to first have their effect, the need for relief is immediate. There is no time to wait and see how the insurance market reacts to those statutory changes.

Against:

The insurance commissioner should be able to monitor the pool and take corrective action should the pool become unsound, but instead would be limited to examining the pool only when indicated by others' reports (or by the failure to file those reports) and reporting findings to others. The pool would be exempt from the insurance code and its financial safeguards such as maintaining minimum levels of reserves. If the pool failed to maintain adequate reserves to pay claims, or failed to maintain adequate aggregate excess coverage for when the pool's resources were exhausted in a given fiscal period, or in some other way suffered from faulty planning or management, the pool's losses (which could be many millions of dollars) would have to be made up by the state colleges and universities who joined it. The legislature would have to divert taxpayer money to the schools if education were not to suffer. The state has a strong and legitimate interest in ensuring that the pool is properly run. The bill should empower the insurance commissioner to examine the pool at any time and to take necessary corrective action, including appointing a receiver as can be done for commercial insurance companies under the insurance code. That way, problems could be corrected before they reached disastrous proportions.

Response: It would be unnecessary to so involve the state insurance commissioner and invoke provisions of the insurance code. State colleges and universities are subject to regular oversight by the legislature through the appropriations process, and the governing boards of those

institutions are not about to jeopardize good relations with the legislature by insufficiently attending to the need to hire good managers and expert actuaries for the pool. The institutions are in a unique position not only by virtue of their dependence on the legislature, but also through their constitutionally-granted authority to manage their own affairs. The bill is sufficient in its provisions for reports to the insurance commissioner and commissioner examination upon inadequate reports.

Against:

The bill would be unfair to insurance companies by forcing the private sector to compete with a publicly-funded program exempt from the regulation imposed on commercial insurance companies.

Response: If the insurance were reasonably available from the private sector, there would be no need for the bill. Commercial insurance companies have largely abandoned this market.

Against:

The bill fails to attack the root of the problem, which is exorbitant jury awards. Legislation should place constraints on the suits themselves. It would be more effective to place limits on collections, prohibit interest on judgments, and specifically require suits to be brought in the Court of Claims, where there is no jury.

Response: An important element of the investment pool envisioned by the bill's proponents is an active program of risk reduction and loss management through education of its participants, who will have strong incentive to improve because it will be their money at stake in the pool. Such efforts will reduce vulnerability to lawsuits. It would be unfair to injured parties to limit arbitrarily how much they can collect, and such proposals are outside the proper scope of this bill.

POSITIONS:

The Presidents Council of State Colleges and Universities supports the general principles outlined in House Bill 4407 Substitute H-1. (5-15-87)