SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

House Bill 4213 (Substitute S-3 as reported)
Sponsor: Representative Mary C. Brown
House Committee: Insurance
Senate Committee: Commerce and Technology

Date Completed: 2-11-88

RATIONALE

Public Act 138 of 1982, which allows municipalities to collaborate in forming self-insurance pools, was enacted after municipalities complained that they either were unable to obtain necessary insurance coverages in the marketplace, or, at least, could not obtain insurance at reasonable rates—especially in the area of liability coverage. The Act created a means for municipal corporations, such as cities, counties, school districts, road commissions, and public authorities, to spread their risks among themselves by creating an entity that would, in essence, act in the stead of an insurance company. Municipal self-insurance pools can provide casualty, property, automobile, surety and fidelity, and umbrella coverages, but not health care coverage. The Act specifies that self-insurance pools are not insurance companies under State law, and in carrying out their authorized activities are not conducting insurance business. Thus, these self- insurance pools are not subject to the kind of regulation faced by insurance companies operating in the State, and the Insurance Bureau reportedly has no official role in overseeing municipal pools. In fact, some people contend that municipal self-insurance pools virtually are unregulated even though their operations give rise to the same concerns about financial stability and solvency, as well as rating and marketing practices, that have lead to extensive regulation of the insurance industry. Some people contend that the nature of the financial risks involved in self-insurance demands that State regulators be informed about the existence and financial status of self-insurance pools and be empowered to act to head off financial crises.

CONTENT

The bill would amend Public Act 138 of 1982 to:

- **Provide for regulation of municipal self-insurance pools by the Insurance Bureau, including disciplinary action against pools that failed to comply with financial requirements.**
- **Permit a reduction in the amount of aggregate excess insurance required of pools and permit a cash deposit to serve as an alternative to such insurance.**
- **Add penalties for misrepresentation.**
- **Allow nonprofit public transportation corporations (i.e., bus companies that are not public authorities, which already qualify) to participate in pools.**

Filing Requirements

Under the bill, a municipal pool would be required to file the following with the Insurance Bureau:

- A copy of the intergovernmental contract creating the pool, which would have to be submitted immediately upon formation of the pool.
- A copy of each coverage document form.
- A copy of the pool's aggregate excess insurance contract, which the Insurance Commissioner would have to review for compliance with the Act.
- The annual financial statements currently provided to the Department of Treasury.
- An annual certification by an independent actuary that the pool's reserves were adequate. (The bill specifies that pools would have to maintain cash reserves adequate to pay claims.)
- If a pool obtained reinsurance, a copy of the reinsurance contract or, if that were not available, other suitable documentation of coverage.

Compliance

The Insurance Commissioner would be required to examine each municipal self-insurance pool to see if it was complying with the law. If a pool failed to comply with financial requirements, the Commissioner would have to notify the pool (and the State Treasurer), and the pool would have 30 business days to file a plan to restore compliance. Failure by the pool to file a plan would create a presumption that the pool did not meet financial requirements. If a plan were filed, the Commissioner could grant a pool time to restore compliance if he or she were satisfied that the pool was safe, reliable, and entitled to public confidence, and that the pool would suffer a material financial loss from an immediate conversion of its assets. If the plan were not approved, or if it were approved but the pool was not in compliance one year later, the Commissioner could either grant more time or take action to suspend, revoke, or limit the pool's right to do business.

Violations

If the Commissioner had probable cause to believe that a group self-insurance pool (or anyone else) was in violation of the governing Act, he or she would be required, pursuant to the Administrative Procedures Act, to notify the pool (or other person) in writing of the complaint and of the proceedings being contemplated. Before a notice of hearing was issued, the pool would have to be given an opportunity to confer and discuss the complaint with the Insurance Bureau, and the matter could be disposed of summarily by agreement of the parties. If a hearing were held and the Commissioner determined that a violation existed, the Commissioner would have to put his or her findings and decision in writing and issue a cease and desist order. The Commissioner also could order any of the following:

- Payment of a fine of up to $500 per violation not to exceed $5,000 in the aggregate, or a fine of up to $2,500 per violation with an aggregate of $25,000 in any

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six-month period if the pool knew or should have known it was in violation.
- Restitution or refund to an aggrieved person.
- Suspension, limitation, or revocation of the pool's right to conduct business.
- Liquidation and receivership, as with an insurance company.

Violation of a cease and desist order could result in a civil fine of up to $10,000 per violation.

The bill also would prohibit municipal self-insurance pools from misrepresenting their policies or those of competitors. Such activity would be a misdemeanor punishable by imprisonment for up to 90 days or by a fine of up to $100 per violation.

Excess Insurance

Currently, municipal self-insurance pools must carry a minimum of $5 million of aggregate excess insurance. The bill would allow the Insurance Commissioner to determine that a lesser amount was adequate. Also, the bill would allow a pool instead to deposit $5 million (or less) in unimpaired surplus with the State Treasurer, or maintain some combination of aggregate excess insurance and surplus deposit.

MCL 124.5 et al.

SENATE COMMITTEE ACTION

The Senate Committee on Commerce and Technology adopted a substitute bill in order to amend the title and make a technical change.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. Fines could be levied for violations of the provisions of the bill. The amount of revenue these fines would generate, if any, is not known.

ARGUMENTS

Supporting Argument

The bill would provide needed oversight of municipal self-insurance pools. Currently, the Insurance Bureau has no regulatory powers over such pools and reportedly is not routinely notified of their existence. Furthermore, pools are required only to send annual financial statements to the Treasury Department, which reportedly contends that the statements do not contain sufficient information for effective oversight. In addition, the Treasury Department argues that it is neither equipped nor authorized to provide oversight. Because these pools operate much like insurance companies, which are regulated extensively, the public needs some assurance that pools have the financial backing to pay claims. If a pool is not prepared for large losses, its members could be forced to raise taxes to pay special assessments. Most of the requirements in the bill merely involve the pools' notifying the Insurance Bureau of basic information about their formation and financial status. The Bureau would be authorized to take action only when financial requirements were not being met, and pools would then have the opportunity to formulate a plan of compliance. The bill also would impose restrictions on marketing similar to those that apply to insurance companies and penalize pools for misrepresenting their products and those of competitors. Since the ultimate support for a pool in the event of a financial crisis or insolvency is the taxpayer, the State should be informed about the existence and financial status of self-insurance pools and should be empowered to avert a financial crisis.

Supporting Argument

The bill would authorize some bus companies that were formed as nonprofit corporations to participate in self-insurance pools along with public transporation authorities, which they closely resemble.

Opposing Argument

There are fears that increased regulation would make it more difficult for pools to provide municipal corporations with essential coverages. Self-insurance pools have grown dramatically because municipalities could not get coverage from insurance companies or, at least, could not afford what insurance was available. Pools are an alternative to being uninsured, which poses far more serious risks to small municipalities and public authorities than do self-insurance pools.

Response: The regulations proposed in the bill are modest in comparison to the many requirements imposed on insurance companies in such areas as capitalization, rates, reverses, and policy forms. These requirements still would not apply to municipal pools.

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