SB 212-FN – AS INTRODUCED

2012 SESSION

12-2815
01/09

SENATE BILL ***212-FN***

AN ACT relative to pooled risk management programs.

SPONSORS: Sen. White, Dist 9; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Gallus, Dist 1; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Rep. Sapareto, Rock 5; Rep. Azarian, Rock 4; Rep. Tucker, Rock 17

COMMITTEE: Commerce

ANALYSIS

This bill makes changes in the laws regulating pooled risk management programs. Under this bill, the state of New Hampshire may participate in a pooled risk management program. This bill also requires pooled risk management programs to return any surplus annually and in cash to the state or the appropriate political subdivisions.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to pooled risk management programs.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Pooled Risk Programs; Purpose. Amend RSA 5-B:1 to read as follows:

5-B:1 Purpose. The purpose of this chapter is to provide for the establishment of pooled risk management programs and to affirm the status of such programs established for the benefit of political subdivisions of the state. The legislature finds and determines that insurance and risk management is essential to the proper functioning of ***the state and its*** political subdivisions; that risk management can be achieved through purchase of traditional insurance or by participation in pooled risk management programs established for the benefit of ***the state and its*** political subdivisions; that pooled risk management is an essential governmental function by providing focused public sector loss prevention programs, accrual of interest and dividend earnings which may be returned to the public benefit and establishment of costs predicated solely on the actual experience of ***the state and the*** political subdivisions within the state; that the resources of ***the state and its*** political subdivisions are presently burdened by the securing of insurance protection through standard carriers; and that pooled risk management programs which meet the standards established by this chapter should not be subject to ***department of*** insurance regulation and taxation by the state. ***The purpose of this chapter is also to clarify the regulation and operation of pooled risk management programs and the legislative intent in adopting this chapter.***

2 Pooled Risk Programs; Definitions. RSA 5-B:2, I and II are repealed and reenacted to read as follows:

I. "Annual filing" means an annual filing with the department made for the purpose of providing public access to certain information concerning the nature and organization of pooled risk management programs. Such annual filing shall include but not be limited to the following:

(a) The name and legal address of each pooled risk management program;

(b) A list of current officers, their titles and addresses;

(c) A brief description of the coverage provided;

(d) The annual accounting required under RSA 5-B:5, I(d);

(e) A written plan of operation or bylaws; and

(f) The annual actuarial accounting required under RSA 5-B:5, III.

II. "Department" means the department of state.

3 Pooled Risk Programs; Categories of Coverage. Amend RSA 5-B:3 to read as follows:

5-B:3 Pooled Risk Management Authorized and Affirmed; Membership.

I. A political subdivision, by resolution of its governing body, may establish and enter into agreements for obtaining or implementing insurance by self-insurance; for obtaining insurance from any insurer authorized to transact business in this state as an admitted or surplus lines carrier; or for obtaining insurance secured in accordance with any method provided by law; or for obtaining insurance by any combination of the provisions of this paragraph. Agreements made pursuant to this paragraph may provide for pooling of self-insurance reserves, risks, claims and losses, and of administrative services and expenses associated with them among political subdivisions. To accomplish the purposes of this chapter, 2 or more political subdivisions may form an association under the laws of this state or affirm an existing association so formed to develop and administer a risk management program having as its purposes reducing the risk of its members; safety engineering; distributing, sharing, and pooling risks; acquiring insurance, excess loss insurance, or reinsurance; and processing, paying and defending claims against the members of such association.

I-a. No pooled risk management program established under this chapter shall establish as a prerequisite for membership in the pooled risk management program, membership in an entity or organization not organized under this chapter.

I-b. No pooled risk management program established under this chapter shall engage in political activity.

II. RSA 53-A shall not apply to an association formed or affirmed under this chapter, nor to the participation in such an association by a political subdivision.

III. ***Any association formed or affirmed under this chapter offering*** pooled risk management programs established for the benefit of political subdivisions may provide any or all of the following coverages***; provided that each pooled risk management program shall only provide one of such categories of coverage***:

(a) Casualty, including general and professional liability; errors and omissions; workers' compensation and employer's liability; medical payments; or unemployment compensation as authorized under federal law.

(b) Property, including marine and inland navigation; transportation; boiler and machinery; fire; theft; or natural hazards.

(c) Vehicle, including any liability or loss arising from the ownership or operation of vehicles.

(d) Surety and fidelity.

(e) Environmental impairment.

(f) Hospital, medical, surgical or dental benefits for employees and their dependents.

(g) Life, income maintenance, accidental death and dismemberment, vision loss or impairment, or legal benefits for employees and their dependents.

4 Pooled Risk Programs; Annual Filing Requirements. Amend RSA 5-B:4 to read as follows:

5-B:4 [~~Informational~~] ***Annual*** Filing Required; Fee. Pooled risk management programs established for the benefit of political subdivisions shall make an [~~informational~~] ***annual*** filing,

as defined in RSA 5-B:2, [~~II~~] ***I***, with the department and shall pay an annual filing fee of $150. The department may make requests for additional information necessary to exercise regulatory or enforcement authority pursuant to, but not limited to, the hearings procedures under RSA 421-B:26-a over any pooled risk management program formed or affirmed in accordance with this chapter. Pooled workers' compensation and unemployment compensation programs which are regulated by and which report to the department of labor and the department of employment security, under RSA 281-A and RSA 282-A, respectively, shall be exempt from the requirements of this section as long as their operations and reports conform to the laws and rules adopted by those departments.

5 Pooled Risk Programs; Requirements for Organization an Operation. Amend RSA 5-B:5 to read as follows:

5-B:5 Standards of Organization and Operation.

I. Each pooled risk management program shall meet the following standards of organization and operation. Each program shall:

(a) Exist as a [~~legal entity~~] ***nonprofit charitable trust or corporation*** organized under New Hampshire law. ***No other organizational structures shall be permitted.***

(b) Be governed by a board the majority of which is composed of elected [~~or appointed~~] public officials[~~, officers, or employees~~]. Board members shall not receive compensation but may be reimbursed for mileage and other reasonable expenses.

(c) Return all earnings and surplus in excess of any amounts required for [~~administration,~~] claims, reserves, [~~and~~] ***the*** purchase of excess insurance***, and reasonable costs of administration*** to ***the state or*** the participating political subdivisions***, to be paid to the state or the political subdivisions which contributed to the pooled risk management program, annually and in cash. The state treasurer or the treasurer of the political subdivision shall deposit the cash into the fund which was the original source of funding.***

(d) [~~Provide for~~] ***Submit and pay for*** an annual [~~audit~~] ***accounting*** of financial transactions by an independent certified public accountant ***chosen by the secretary of state***. [~~The audit shall be filed with the department and distributed to participants of each pooled risk management program.~~]

(e) Submit to such other financial accountings as may be reasonably requested by the state or member political subdivisions, which shall pay for such an accounting.

(f) Be governed by written bylaws which shall detail the terms of eligibility for participation by ***the state or*** political subdivisions, the governance of the program and other matters necessary to the program's operation. Bylaws and any subsequent amendments shall be filed with the department ***and shall be posted prominently on the program's website. In no event shall such bylaws forbid, preclude, or penalize any political subdivision from leaving the pooled risk management program or returning to the program***.

[~~(f) Provide for an annual actuarial evaluation of the pooled risk management program. The evaluation shall assess the adequacy of contributions required to fund any such program and the reserves necessary to be maintained to meet expenses of all incurred and incurred but not reported claims and other projected needs of the plan. The annual actuarial evaluation shall be performed by a member of the American Academy of Actuaries qualified in the coverage area being evaluated, shall be filed with the department, and shall be distributed to participants of each pooled risk management program.~~

~~(g) Provide notice to all participants of and conduct 2 public hearings for the purpose of advising of potential rate increases, the reasons for projected rate increases, and to solicit comments from members regarding the return of surplus, at least 10 days prior to rate setting for each calendar year.~~]

II. Moneys provided to a pooled risk management program established under this chapter by the state or member political subdivisions shall not be considered securities under RSA 421-B.

III. Each pooled risk management program shall provide for an annual actuarial accounting of the pooled risk management program, which shall assess the adequacy of contributions required to fund any such program and the reserves necessary to be maintained to meet the expenses of all incurred and incurred but not reported claims and other projected needs of the plan. This evaluation shall be performed by a member of the American Academy of Actuaries qualified in the coverage area being evaluated, filed with the department and distributed to participants of each pooled risk management program. Actuarial accountings shall not be conducted using commercial standards.

IV. Each pooled risk management program shall conduct 2 public hearings to advise participants of proposed rates, providing notice to all pooled risk management program participants by means of a prominent posting on its website.

V. The rates proposed by any pooled risk management program established under this chapter shall be uniform among all pooled risk management program's participants.

VI. If a pooled risk management program fails to provide for an annual [~~audit~~] ***accounting*** or an annual actuarial [~~evaluation~~] ***accounting***, the department shall perform or cause to be performed the required [~~audit~~] ***accounting*** or [~~evaluation~~] ***actuarial accounting*** and shall be reimbursed the [~~cost~~] ***costs*** by the program.

6 Pooled Risk Programs; Tax Exemption; Confidentiality. Amend RSA 5-B:6 and 5-B:7 to read as follows:

5-B:6 Declaration of Status; Tax Exemption; Liability.

I. Any pooled risk management program meeting the standards required under this chapter is not an insurance company, reciprocal insurer, or insurer under the laws of this state, and administration of any activities of the plan shall not constitute doing an insurance business for purposes of regulation or taxation.

II. Any such program operating under this chapter[~~, whether or not a body corporate,~~] may sue or be sued; make contracts; hold and dispose of real property; and borrow money, contract debts, and pledge assets in its name.

III. Participation by ***the state or*** a political subdivision in a pooled risk management program formed and affirmed under this chapter shall not subject ***the state or*** any such political subdivision to any liability to any third party for the acts or omissions of the pooled risk management program***, the state,*** or any other political subdivision participating in the program.

5-B:7 Confidentiality of Certain Claims Information. Notwithstanding any provision of law to the contrary, any information of any pooled risk management program formed or affirmed under this chapter pertaining to [~~claims analysis or claims management~~] ***the Health Insurance Portability and Accountability Act (HIPPA)*** shall be privileged and confidential and not subject to disclosure to any third party.

7 Pooled Risk Management Programs; Exemption. Amend RSA 402-H:11-b to read as follows:

402-H:11-b Exemption. An association administering a pooled risk management program operated pursuant to RSA 5-B or conducting business that is exempt from taxation under the Internal Revenue Code, section 115 shall not be required to obtain a certificate of authority or to meet the other requirements of this chapter for services provided in connection with the administration of its pooled risk management plans or its section 115 business, but shall be required to register with the commissioner pursuant to RSA 402-H:11-a. Pooled risk management program registration may be accomplished by providing the commissioner a copy of the [~~informational~~] ***annual accounting*** filing required to be filed with the department of state pursuant to RSA 5-B:4.

8 Repeal. 2010, 149:8, III, relative to a repeal of authority of the secretary of state to investigate, issue cease and desist orders, and impose penalties regarding pooled risk programs, is repealed.

9 Effective Date. This act shall take effect July 1, 2012.

LBAO
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SB 212-FN - FISCAL NOTE

AN ACT relative to pooled risk management programs.

FISCAL IMPACT:

The Insurance Department and the Department of Administrative Services state this bill will have an indeterminable impact on state revenues, and state, county and local expenditures in FY 2013 and each year thereafter. There will be no impact on county and local revenues.

METHODOLOGY:

The Insurance Department states while this bill has no direct impact on the state collected premium tax, it is not clear whether there would be any impact on the aggregate tax base due to entities now being attracted to forming risk pools, and away from the insurance market, or vice versa. Therefore, the Department is unable to determine this bill's potential impact on state revenue. For similar reasons the Department states it is unable to determine if this bill would impact county and local expenditures as it does not know if this bill would impact the cost of providing benefits or the cost of covering other contingent risks.

The Department of Administrative Services states although this bill amends the purpose of RSA 5-B, it does not amend sections related to definitions or membership that would clarify the role of the state in pooled risk management programs, and therefore is unable to evaluate any fiscal impact to the state.

The Department of State states this bill imposes no new duties with regard to pooled risk management programs that would require expenditures for extra personnel or other resources.