



Ohio Legislative Service Commission

Bill Analysis

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H.B. 416

131st General Assembly
(As Introduced)

Rep. Schuring

BILL SUMMARY

- Permits the board of trustees of a state university or college to participate in a joint self-insurance pool to provide personal liability coverage to protect the institution and its employees against loss incurred while undertaking official duties.
- Authorizes the joint self-insurance pool to also provide certain types of property or casualty coverage to cover other risks of the pool members.
- Permits the board to contract with a pool administrator to administer the joint self-insurance pool.
- Exempts a joint self-insurance pool from the application of Ohio's Insurance Laws and its records from Ohio's Public Records Law.
- Permits a joint self-insurance pool to issue obligations and notes to pay claims expenses.
- Requires the pool administrator to prepare and maintain a public report on the aggregate reserved and disbursed pool funds.
- Limits the liability of a state university or college to the amounts payable pursuant to its written agreement with the pool, but permits the institution to assume the risks of any other state university or college.
- Establishes civil immunities and defenses under the Court of Claims Law with respect to individuals involved in administering a joint self-insurance pool.
- Specifies that an employee of a state university or college who becomes a member of the governing body of a joint self-insurance pool does not violate certain state employee ethics laws because the state university or college participates in the pool.

CONTENT AND OPERATION

Overview

Ohio law permits the board of trustees of a state university or college to provide insurance coverage for the institution, its employees, and other authorized personnel. The insurance coverage is to protect the following against loss or liability arising from acts or omissions while acting within the scope of their employment or official responsibilities (1) the state university or college, (2) the members of its board, (3) its officers and employees, and (4) other persons authorized by the board. The insurance coverage can be provided through any of the following:

- Liability insurance purchased from an insurer licensed in Ohio;
- The establishment of or participation in a self-insurance program;
- The establishment of or participation in a captive insurance company (an insurance company that insures only the risks of its parent or affiliated companies) licensed in Ohio or elsewhere.¹

Participation in a joint self-insurance pool

The bill expands this list and permits a board of trustees to participate in a joint self-insurance pool with other state universities or colleges, regardless of whether the university or college secures insurance through one of the other permitted sources.² It also adopts criteria in relation to a joint self-insurance pool. The joint self-insurance pool must be pursuant to a written agreement and to the extent that the board considers the pool to be necessary. Additionally, the joint self-insurance pool must do both of the following:

- Provide for claims expenses that arise from an act or omission of the state university or college, any of its employees, or any other persons authorized by the board while (1) acting in the scope of their employment or official duties or (2) engaging in activities undertaken at the request or direction, or for the benefit, of the state university or college;
- Indemnify or hold harmless the state university's or college's employees against such loss or damage.

¹ R.C. 3345.202 and R.C. 3964.01, not in the bill.

² R.C. 3345.202(B)(4) and 3345.203(B).



Self-insurance pool not an insurance company

The bill specifies that a joint self-insurance pool established by a state university or college is not an insurance company. Its operation does not constitute doing insurance business and it is not subject to Ohio's Insurance Law.³ Furthermore, the bill does not affect the ability of a state university or college to self-insure under any other authority of law.⁴

Joint self-insurance pools not subject to public records requirements

Additionally, the bill exempts joint self-insurance pools from certain public records requirements under Ohio law. Continuing law requires nonprofit organizations entering into contracts with the federal or state government, or a unit of state government, to keep accurate and complete financial records of any moneys spent in relation to the contract. Those records are public records for purposes of Ohio's Public Records Law. The bill exempts from this requirement records of joint self-insurance pools established under the bill.⁵

Powers and duties of a joint self-insurance pool

The bill establishes certain powers and duties pertaining to a joint self-insurance pool, as described below.

Property or casualty insurance

In addition to providing self-insurance against personal liability, the bill permits a joint self-insurance pool to also include certain forms of property or casualty self-insurance to cover any other risks of pool members. The authorized forms of property or casualty self-insurance are:

- Public general liability, professional liability, or employee liability;
- Individual or fleet motor vehicle or automobile liability and protection against other liability and loss associated with the ownership, maintenance, and use of motor vehicles;
- Aircraft liability and protection against other liability and loss associated with the ownership, maintenance, and use of aircraft;

³ R.C. 3345.203(G)(2).

⁴ R.C. 3345.203(I).

⁵ R.C. 149.431.



- Fidelity, surety, and guarantee;
- Loss or damage to property by fire, lightning, hail, tempest, flood, earthquake, or snow, explosion, accident, or other risk;
- Marine, inland transportation and navigation, boiler containers, pipes, engines, flywheels, elevators, and machinery;
- Environmental impairment;
- Loss or damage by any hazard upon any other risk to which state universities or colleges are subject, which is not prohibited by statute or at common law from being the subject of casualty or property insurance.⁶

Joint risk management program

Two or more state universities or colleges may authorize the establishment and maintenance of a joint risk-management program, including the employment of risk managers and consultants, for the purpose of preventing and reducing the risks covered by insurance, self-insurance, or joint self-insurance programs.⁷

Pool may issue obligations and notes

The bill permits a state university or college to issue obligations, and notes in anticipation of obligations, by resolution of its board of trustees or other governing body. The bonds and notes must be issued in the manner provided by and subject to the applicable provisions of continuing law. The bonds or notes so issued must provide funds to do both of the following:

- Pay claims expenses, whether by reserve or otherwise;
- Pay the state university's or college's portion of the cost of establishing and maintaining a joint self-insurance pool or to provide for funds held in reserve under the pool.

The continuing law requirements pertaining to private sector bond financings apply to such bonds or notes.⁸

⁶ R.C. 3345.203(G)(1).

⁷ R.C. 3345.203(D).

⁸ R.C. 3345.203(F) and R.C. 9.98 to 9.983 and 3345.12, not in the bill.



Allocation of pool costs among members

Finally, a joint self-insurance pool can allocate the costs of funding the pool among its members on the basis of the member's relative exposure and loss experience. It can also require any deductible under the program to be paid from funds or accounts in the treasury of the state university or college from which a loss was directly attributable.⁹

Pool administrator

The bill permits a board of trustees establishing a joint self-insurance pool to award a contract, without competitive bidding, to a pool administrator to administer the pool. The pool administrator can be any person or political subdivision, or a limited liability company, nonprofit corporation, or regional council of governments organized or created pursuant to Ohio law.

The bill prohibits the board from entering into a contract with a pool administrator without full, prior, public disclosure of all contract terms and conditions. The disclosure must include a statement listing all representations made in connection with any possible savings and losses resulting from the contract, and potential liability of any state university or college or employee. In addition, the proposed contract and disclosure statement must also be presented at a meeting of the board of trustees prior to the meeting when the board authorizes the contract.¹⁰

Report on reserved and disbursed funds

The bill imposes on a pool administrator certain reporting requirements pertaining to funds held in a joint self-insurance pool. Under the bill, pool funds must be reserved as necessary, in the exercise of sound and prudent actuarial judgment, to cover potential liabilities, loss, and damages. The bill requires a report on the aggregate amounts reserved and disbursed from pool funds to be prepared and maintained in the pool administrator's office. The report must be prepared and maintained within 90 days after the close of the pool's fiscal year.

The report must include the aggregate disbursements made for the administration of the pool, including claims paid, costs of the legal representation of the state universities or colleges and employees, and fees paid to consultants. The report also must be accompanied by a written report from a member of the American Academy of Actuaries certifying whether the amounts reserved (1) conform to the bill's

⁹ R.C. 3345.203(C)(4).

¹⁰ R.C. 3345.203(C)(2).



reporting requirements, (2) are computed in accordance with accepted loss reserving standards, and (3) are fairly stated in accordance with sound loss reserving principles (see "**Contract with the American Academy of Actuaries**" below).

The bill requires the pool administrator to make the report available for public inspection at all reasonable times during regular business hours. At the request of any person, the pool administrator must make copies of the report within reasonable time and at cost. The report is in lieu of the records requirements under Ohio's Public Records Law.¹¹

Contract with the American Academy of Actuaries

Additionally, in order to comply with these reporting requirements, the bill requires a self-insurance pool to contract with a member of the American Academy of Actuaries to prepare the written evaluation of the pool's reserve funds.¹²

Liability of a university under a joint self-insurance pool

A state university or college is not liable under a joint self-insurance pool for any amount in excess of the amounts payable under its written participation agreement. However, a state university or college may, to the extent permitted under a joint self-insurance pool agreement, assume the risks of any other state university or college, including the indemnification of its employees.

A joint self-insurance pool is a separate legal entity for the public purpose of enabling pool members to obtain insurance or to provide for a formalized, jointly administered self-insurance fund. An entity created pursuant to the bill is exempt from all state and local taxes.¹³

Civil action against a state officer or employee

The Court of Claims Law generally waives the state's sovereign immunity and permits the state to be sued, subject to certain limitations, in the Court of Claims.¹⁴ The bill establishes civil immunities and defenses with respect to individuals involved in administering a joint self-insurance pool. While in the course of administering a joint self-insurance pool, the pool administrator and any of its employees must:

¹¹ R.C. 3345.203(C)(1).

¹² R.C. 3345.203(C)(3).

¹³ R.C. 3345.203(E).

¹⁴ R.C. 2743.02, not in the bill.



- Be deemed to be an instrumentality of the state for purposes of state liability under the Court of Claims Law;
- Be deemed to be performing a public duty for the purposes of that Law;
- Have the defenses to, and immunities from, civil liability as provided in that Law.¹⁵

In a civil action against a state officer or employee, the bill requires both of the following to be determined in the Court of Claims according to the Court of Claims Law:

- Any claims or litigation relating to the administration of a joint self-insurance pool, including any immunities or defenses;
- Any claims relating to the scope of or denial of coverage under that pool or its administration.¹⁶

The establishment of or participation in a joint self-insurance pool does not constitute a waiver of any immunity or defense available to the member state university or college or to any covered entity.¹⁷

Public Employee Ethics Laws

Likewise, the bill regulates the application of Ohio's Public Employee Ethics Law with respect to employees of state universities or colleges who are involved in administering a joint self-insurance pool. Under the bill, a public official or employee of a state university or college who is or becomes a member of the governing body of a self-insurance pool does not violate any of the following provisions of current law because of the institution participating in the pool:

- The prohibition against a public official or employee soliciting, or using his or her authority or influence to secure, anything of value that would constitute a substantial and improper influence.
- The prohibition against an elected or appointed official accepting outside compensation for any service the official rendered personally in any matter before the employing agency.

¹⁵ R.C. 3345.203(K)(2).

¹⁶ R.C. 3345.203(K)(1).

¹⁷ R.C. 3345.203(J).



- The prohibition against a public official knowingly having an unlawful interest in a public contract.¹⁸

Definitions

The bill defines the following terms:

"**Claims expenses**" means payment of judgments, settlement of claims, expense, loss, and damage.

"**State university or college**" means the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, and the Northeast Ohio Medical University, and includes its board of trustees.¹⁹

HISTORY

ACTION	DATE
Introduced	12-14-15

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¹⁸ R.C. 3345.203(H) and R.C. 102.03(D) and (E), 102.04(C), and 2921.42, not in the bill.

¹⁹ R.C. 3345.203(A) and R.C. 3345.12 and 3345.011, not in the bill.

