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**SUBSTITUTE HOUSE BILL 2780**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Chandler and L. Thomas)

Read first time 02/02/96.

1       AN ACT Relating to private school liability insurance; adding a new  
2 chapter to Title 48 RCW; providing an effective date; and declaring an  
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION.   **Sec. 1.** This chapter is intended to provide the  
6 exclusive source of authority for private schools to jointly  
7 self-insure risks, jointly purchase insurance or reinsurance, and to  
8 contract for risk management, claims, and administrative services.  
9 This chapter shall be liberally construed to grant private schools  
10 maximum flexibility in self-insuring to the extent the self-insurance  
11 programs are operated in a safe, sound, and financially secure manner.  
12 This chapter is intended to require prior approval for the  
13 establishment of every joint private school self-insurance program.  
14 This chapter is not intended to authorize or regulate self-insurance of  
15 unemployment compensation under chapter 50.44 RCW, or industrial  
16 insurance under chapter 51.14 RCW.

1        NEW SECTION.     **Sec. 2.**     Unless the context clearly requires  
2 otherwise, the definitions in this section apply throughout this  
3 chapter.

4        (1) "Risk assumption" means a decision to absorb the private  
5 school's financial exposure to a risk of loss without the creation of  
6 a formal program of advance funding of anticipated losses.

7        (2) "Self-insurance" means jointly advance funding and managing  
8 financial exposure to a risk of loss that is not transferred through  
9 the purchase of an insurance policy or contract.

10       (3) "Private school" means a school approved under chapter 28A.195  
11 RCW.

12       (4) "Property and liability risks" includes the risk of property  
13 damage or loss sustained by a private school and the risk of claims  
14 arising from the tortious or negligent conduct or any error or omission  
15 of the private school, its officers, employees, agents, or volunteers  
16 as a result of which a claim may be made against the private school.

17       (5) "State risk manager" or "risk manager" means the state risk  
18 manager of the division of risk management within the department of  
19 general administration.

20       NEW SECTION.     **Sec. 3.**     (1) The governing body of a private school  
21 may join or form a self-insurance program together with other private  
22 schools, and may jointly purchase insurance or reinsurance with other  
23 private schools for property and liability risks only as permitted  
24 under this chapter.     In addition, the self-insurance program may  
25 contract for or hire personnel to provide risk management, claims, and  
26 administrative services in accordance with this chapter.

27       (2) The agreement to form a joint self-insurance program shall be  
28 made under rules established by the state risk manager.

29       (3) Every joint self-insurance program shall be periodically  
30 audited by an independent certified public accountant, and is subject  
31 to regulation by the state risk manager.

32       (4) If provided for in the agreement or contract, a joint  
33 self-insurance program may, in conformance with this chapter:

34       (a) Contract or otherwise provide for risk management and loss  
35 control services;

36       (b) Contract or otherwise provide legal counsel for the defense of  
37 claims and other legal services;

1 (c) Consult with the state insurance commissioner and the state  
2 risk manager;

3 (d) Jointly purchase insurance and reinsurance coverage in such  
4 form and amount as the program's participants agree by contract; and

5 (e) Possess any other powers and perform all other functions  
6 reasonably necessary to carry out the purposes of this chapter.

7 (5) A private school that has decided to assume a risk of loss must  
8 have available for inspection by the state risk manager a written  
9 report indicating the class of risk or risks the governing body of the  
10 private school has decided to assume. The private school must also  
11 provide a plan for reinsurance, a trust fund, or stop-loss policy to  
12 cover self-insured amounts or retentions.

13 (6) Every joint self-insurance program governed by this chapter  
14 shall appoint the risk manager as its attorney to receive service of,  
15 and upon whom shall be served, all legal process issued against it in  
16 this state upon causes of action arising in this state.

17 (a) Service upon the risk manager as attorney shall constitute  
18 service upon the program. Service upon joint insurance programs formed  
19 under this chapter can be had only by service upon the risk manager.  
20 At the time of service, the plaintiff shall pay to the risk manager a  
21 fee to be set by the risk manager, and considered as costs in the  
22 action.

23 (b) With the initial filing for approval with the risk manager,  
24 each joint self-insurance program shall designate by name and address  
25 the person to whom the risk manager shall forward legal process so  
26 served upon him or her. The joint self-insurance program may change  
27 such person by filing a new designation.

28 (c) The appointment of the risk manager as attorney shall be  
29 irrevocable, shall bind any successor in interest to the assets or  
30 liabilities of the joint self-insurance program, and shall remain in  
31 effect as long as there is in force in this state any contract made by  
32 the joint self-insurance program or liabilities or duties arising  
33 therefrom.

34 (d) The risk manager shall keep a record of the day and hour of  
35 service upon him or her of all legal process. A copy of the process,  
36 by registered mail with return receipt requested, shall be sent by the  
37 risk manager, to the person designated for the purpose by the joint  
38 self-insurance program in its most recent such designation filed with  
39 the risk manager. No proceedings shall be had against the joint self-

1 insurance program, and the program shall not be required to appear,  
2 plead, or answer, until the expiration of forty days after the date of  
3 service upon the risk manager.

4 NEW SECTION. **Sec. 4.** The state risk manager shall adopt rules  
5 governing the management and operation of joint private school  
6 self-insurance programs covering property or liability risks. All  
7 rules shall be appropriate for the type of program and class of risk  
8 covered. The state risk manager's rules shall include:

9 (1) Standards for the management, operation, and solvency of  
10 self-insurance programs, including the necessity and frequency of  
11 actuarial analyses and claims audits;

12 (2) Standards for claims management procedures; and

13 (3) Standards for contracts between self-insurance programs and  
14 private businesses including standards for contracts between  
15 third-party administrators and programs.

16 NEW SECTION. **Sec. 5.** Before the establishment of a joint  
17 self-insurance program covering property or liability risks by private  
18 schools, private schools must obtain the approval of the state risk  
19 manager. Risk manager approval is not required for the establishment  
20 of an individual private school self-insurance program covering  
21 property or liability risks. The private schools proposing creation of  
22 a self-insurance program requiring prior approval shall submit a plan  
23 of management and operation to the state risk manager that provides at  
24 least the following information:

25 (1) The risk or risks to be covered, including any coverage  
26 definitions, terms, conditions, and limitations;

27 (2) The amount and method of financing the benefits or covered  
28 risks, including the initial capital and proposed rates and projected  
29 premiums;

30 (3) The proposed claim reserving practices;

31 (4) The proposed purchase and maintenance of insurance or  
32 reinsurance in excess of the amounts retained by the self-insurance  
33 program;

34 (5) The legal form of the program, including but not limited to any  
35 bylaws, charter, or trust agreement;

36 (6) The agreements with members of the program defining the  
37 responsibilities and benefits of each member and management;

1 (7) The proposed accounting, depositing, and investment practices  
2 of the program;

3 (8) The proposed time when actuarial analysis will be first  
4 conducted and the frequency of future actuarial analysis;

5 (9) A designation of the individual upon whom service of process  
6 shall be executed on behalf of the program and a designation of the  
7 individual to whom service of process shall be forwarded by the risk  
8 manager on behalf of the program;

9 (10) All contracts between the program and private persons  
10 providing risk management, claims, or other administrative services;

11 (11) A professional analysis of the feasibility of creation and  
12 maintenance of the program; and

13 (12) Any other information required by rule of the state risk  
14 manager that is necessary to determine the probable financial and  
15 management success of the program or that is necessary to determine  
16 compliance with this chapter.

17 NEW SECTION. **Sec. 6.** (1) Within one hundred twenty days of  
18 receipt of a plan of management and operation, the state risk manager  
19 shall either approve or disapprove the formation of the self-insurance  
20 program after reviewing the plan to determine whether the proposed  
21 program complies with this chapter and all rules adopted in accordance  
22 with this chapter.

23 (2) If the state risk manager denies a request for approval, the  
24 state risk manager shall specify in detail the reasons for denial and  
25 the manner in which the program fails to meet the requirements of this  
26 chapter or any rules adopted in accordance with this chapter.

27 (3) Whenever the state risk manager determines that a joint  
28 self-insurance program covering property or liability risks is in  
29 violation of this chapter or is operating in an unsafe financial  
30 condition, the state risk manager may issue and serve upon the program  
31 an order to cease and desist from the violation or practice.

32 (a) The state risk manager shall deliver the order to the  
33 appropriate entity or entities directly or mail it to the appropriate  
34 entity or entities by registered mail with return receipt requested.

35 (b) If the program violates the order or has not taken steps to  
36 comply with the order after the expiration of twenty days after the  
37 cease and desist order has been received by the program, the program is

1 deemed to be operating in violation of this chapter, and the state risk  
2 manager shall notify the attorney general of the violation.

3 (c) After hearing or with the consent of a program governed by this  
4 chapter and in addition to or in lieu of a continuation of the cease  
5 and desist order, the risk manager may levy a fine upon the program in  
6 an amount not less than three hundred dollars and not more than ten  
7 thousand dollars. The order levying such fine shall specify the period  
8 within which the fine shall be fully paid. The period within which  
9 such fines shall be paid shall not be less than fifteen nor more than  
10 thirty days from the date of such order. Upon failure to pay any such  
11 fine when due the risk manager shall request the attorney general to  
12 bring a civil action on the risk manager's behalf to collect the fine.  
13 The risk manager shall pay any fine so collected to the state treasurer  
14 for the account of the general fund.

15 (4) Each self-insurance program approved by the state risk manager  
16 shall annually file a report with the state risk manager providing:

17 (a) Details of any changes in the articles of incorporation,  
18 bylaws, or cooperative agreement;

19 (b) Copies of all the insurance coverage documents;

20 (c) A description of the program structure, including participants'  
21 retention, program retention, and excess insurance limits and  
22 attachment point;

23 (d) An actuarial analysis, if required;

24 (e) A list of contractors and service providers;

25 (f) The financial and loss experience of the program; and

26 (g) Such other information as required by rule of the state risk  
27 manager.

28 (5) No self-insurance program requiring the state risk manager's  
29 approval may engage in an act or practice that in any respect  
30 significantly differs from the management and operation plan that  
31 formed the basis for the state risk manager's approval of the program  
32 unless the program first notifies the state risk manager in writing and  
33 obtains the state risk manager's approval. The state risk manager  
34 shall approve or disapprove the proposed change within sixty days of  
35 receipt of the notice. If the state risk manager denies a requested  
36 change, the risk manager shall specify in detail the reasons for denial  
37 and the manner in which the program would fail to meet the requirements  
38 of this chapter or any rules adopted in accordance with this chapter.

1        NEW SECTION.    **Sec. 7.**    (1) Every joint self-insurance program  
2 covering liability or property risks shall provide for the contingent  
3 liability of participants in the program if assets of the program are  
4 insufficient to cover the program's liabilities. This provision shall  
5 be fully insured through a form of stop-loss insurance from an admitted  
6 Washington insurer.

7        (2) By authorizing joint self-insurance programs for private  
8 schools under this chapter and regulating these self-insurance programs  
9 through the state risk manager, the state shall not be, and shall not  
10 be deemed to be, an insurer, reinsurer, guarantor, or otherwise liable  
11 under this chapter, and the state shall not make any gift, loan, or  
12 otherwise lend its credit under this chapter.

13        NEW SECTION.    **Sec. 8.**    (1) The state risk manager shall establish  
14 and charge an investigation fee in an amount necessary to cover the  
15 costs for the initial review and approval of a self-insurance program.  
16 The fee must accompany the initial submission of the plan of operation  
17 and management.

18        (2) The costs of subsequent reviews and investigations shall be  
19 charged to the self-insurance program being reviewed or investigated in  
20 accordance with the actual time and expenses incurred in the review or  
21 investigation, as shall other costs incurred by the risk manager in  
22 administering this chapter.

23        NEW SECTION.    **Sec. 9.**    (1) Any person who files reports or  
24 furnishes other information required under this title, required by the  
25 risk manager under authority granted by this title, or which is useful  
26 to the risk manager or the state auditor in the administration of this  
27 title, shall be immune from liability in any civil action or suit  
28 arising from the filing of any such report or furnishing such  
29 information to the risk manager, unless actual malice, fraud, or bad  
30 faith is shown.

31        (2) The risk manager and the risk manager's agents and employees  
32 are immune from liability in any civil action or suit arising from the  
33 publication of any report or bulletins or arising from dissemination of  
34 information related to the official activities of the risk manager,  
35 unless actual malice, fraud, or bad faith is shown.

36        (3) The immunity granted by this section is in addition to any  
37 common law or statutory privilege or immunity enjoyed by such person,

1 and nothing in this section is intended to abrogate or modify in any  
2 way such common law or statutory privilege or immunity.

3 NEW SECTION. **Sec. 10.** The state risk manager shall take all steps  
4 necessary to implement this act on its effective date. This section is  
5 necessary for the immediate preservation of the public peace, health,  
6 or safety, or support of the state government and its existing public  
7 institutions, and shall take effect immediately.

8 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act shall take  
9 effect July 1, 1996.

10 NEW SECTION. **Sec. 12.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act shall  
15 constitute a new chapter in Title 48 RCW.

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