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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 381

Sponsor: Senator Jack Faxon

Committee: Commerce and Technology

Date Completed: 1-25-88

SUMMARY OF SENATE BILL 381 as introduced 6-25-87:

Senate Bill 381 would amend the Insurance Code to create the "School District Liability Insurance Association", which would have to indemnify a member district for liability in excess of \$100,000. The bill would do all of the following:

- Prescribe the duties and powers of the Association.
- Provide for a board of directors and prescribe its powers and duties.
- Require the formulation of a plan of operation for the association and specify the matters for which the plan would have to provide.
- Establish the authority of the Commissioner of Insurance with respect to the Association.

School District Liability Insurance Association

The bill would create an unincorporated, nonprofit association to be known as the School District Liability Insurance Association, of which each second-, third-, and fourth-class school district in the State could be a member. Members would be bound by the Association's plan of operation. The Association would not be subject to the other chapters of the Code, but would be subject to other laws of the State as if the Association were a domestic insurer organized under the Code. The Association would have to provide, and each member would have to accept, indemnification for amounts of "ultimate loss" in excess of \$100,000 sustained in each loss occurrence in which a member was legally liable. ("Ultimate loss" would mean "the actual loss amounts as a result of an injury or damage for which a member is legally obligated to pay", and would be incurred by the Association on the date the loss occurred.)

The Association also would be required to establish procedures for members to report promptly each incident that could "reasonably be anticipated to involve" the Association if a member subsequently were held legally liable for injuries or damages. The member also would have to advise the Association of related developments likely to affect the Association's interests. The Association would have to receive and distribute all sums required for its operation, maintain relevant loss and expense data, and require each member to furnish statistics pertaining to the Association's liabilities as required by the plan of operation.

In addition, the Association would have to calculate and charge to members, in a manner specified in the plan of operation, a premium sufficient to cover the Association's expected losses and expenses. The premium also would have to cover incurred but not reported losses and could be adjusted for previous excess or deficient premiums. Such adjustments could be made in a single premium

period or could be distributed over several premium periods in a manner provided for in the plan of operation. The payment of premiums could be required in full within 45 days after the premium charge, or periodically to cover the cash obligations of the Association.

The Association also would be required to establish procedures for reviewing members' incident reporting practices and procedures. If these procedures and practices were considered inadequate to service the Association's liabilities properly, the Association could adjust or contract with another to adjust or assist in the adjustment of the members' reports of incidents that could create a potential liability to the Association, and the Association could charge the member with the cost of the adjustment.

In addition to its mandatory responsibilities, the Association would be permitted to do all of the following:

- Sue and be sued in the name of the Association. (Judgments against the Association could not create any direct liability against individual members.)
- Provide for the indemnification of its members, directors and officers, employees, and "other persons lawfully acting on behalf of the association".
- Reinsure all or portions of its potential liability with reinsurers licensed in Michigan or approved by the Insurance Commissioner.
- Provide for the housing, equipment, and personnel necessary to the efficient operation of the Association.
- Adopt rules for the administration of the Association, enforce those rules, and delegate authority as the board considered necessary for the administration and operation of the Association consistent with the plan of operation.
- Contract for goods and services (including independent claims management, actuarial, investment, and legal services) from others within or outside the State in order to assure the efficient operation of the Association.
- Hear and determine complaints concerning the Association's operation.
- Perform other acts that were necessary or proper to accomplish the Association's purpose and were not inconsistent with the bill or the Association's plan of operation.

Board of Directors

The bill would provide for the creation of a board of directors that would be responsible for the operation of the Association, consistent with the plan of operation and the bill. The initial board would be appointed by the Commissioner and would consist of five directors who were members of school boards from districts that were

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Association members. The Commissioner or a designated representative would serve as an ex officio member of the board without voting privileges. Each director would have one vote and the initial term of office would be two years. The Commissioner would have to convene an organizational meeting of the board within 30 days after the bill's effective date.

The board would have to adopt rules to provide for the composition and terms of office of successor boards of directors, consistent with the membership composition requirements for the initial board. Terms of successor directors would have to be staggered so that all directors' terms would not expire at once and so that a director did not serve a term of more than four years.

Directors of successor boards would be appointed by the Commissioner and would serve until their successors were selected and qualified. The board would elect a chair from among its membership, and vacancies on the board would be filled by the Commissioner consistent with Association's plan of operation. The board could meet as often as required by the chairperson, the Commissioner, or the plan of operation, or at the request of any three directors. The chairperson would retain voting rights on all issues and four directors would constitute a quorum. The board would have to furnish an annual report to each member of the Association.

Plan of Operation

Within 60 days of the initial board's organizational meeting, the board would have to submit a proposed plan of operation, consistent with the objectives and provisions of the bill, to the Commissioner for approval. The plan of operation would have to provide for the "economical, fair, and nondiscriminatory administration of the association and for the prompt and efficient provision of indemnity". If a plan were not submitted within 60 days, then the Commissioner would be required to formulate and implement a plan consistent with the bill, after consultation with the board.

The proposed plan would be considered to have met the bill's requirements if it were not disapproved by written order of the Commissioner within 30 days after submission of the plan. Before the Commissioner could disapprove all or any part of the proposed plan, he or she would have to notify the board in what respect the proposal failed to meet the bill's requirements and objectives. If the board failed to submit a revised plan within the same 30-day period, the Commissioner would be required to formulate and implement a plan consistent with the bill's requirements and objectives. The proposed plan or amendments to it would be subject to majority approval by the board; ratification by a majority of the voting membership, with voting rights being apportioned according to premiums charge; and approval by the Commissioner. Each member-district would be bound by and formally would have to subscribe to and participate in the approved plan.

The plan of operation would have to provide for all of the following:

- The establishment of necessary facilities.
- The management and operation of the Association.
- A preliminary premium, payable by each member in proportion to its total first-year premium, for initial expenses necessary to begin operation of the Association.
- Procedures and criteria for calculating, assessing, and collecting premiums of each member, including adjustments from excess or deficient premiums from prior periods.

- Reimbursement of each member of the board by the Association for actual and necessary expenses incurred on Association business.
- Investment policies of the Association.
- Any other matters necessary to implement the bill effectively.

Commissioner's Authority

The bill specifies that the Association would be subject to all the reporting, loss reserve, and investment requirements of the Commissioner to the same extent as if the Association were an insurer. In addition, the Commissioner or an authorized representative could visit the Association at any time and could examine any and all the Association's affairs.

MCL 500.124 et al.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.