

## CHAPTER 2785

### DEPARTMENT OF COMMERCE

### POLITICAL SUBDIVISION SELF-INSURANCE POOLS

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#### **2785.0100 DEFINITIONS.**

**Subpart 1. Scope.** For the purposes of parts 2785.0100 to 2785.1600, the terms defined in this part have the meanings given them.

**Subp. 2. Board.** "Board" means a pool's board of trustees.

**Subp. 3. Bylaws.** "Bylaws" means the statements and organizational documents adopted by a plan that prescribe its purpose, government, and administration.

**Subp. 4. Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

**Subp. 5. Coverage.** "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.

**Subp. 6. Coverage document.** "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

**Subp. 7. Days.** "Days" means calendar days.

**Subp. 8. Employee health benefit pool.** "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.

**Subp. 9. Financial administrator.** "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.

**Subp. 10. Fund year.** "Fund year" means a pool's 12-month fiscal year.

**Subp. 11. Member.** "Member" means a political subdivision or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.

**Subp. 12. Political subdivision.** "Political subdivision," in reference to employee health benefit pools, means the same as defined in Minnesota Statutes, section 471.617, subdivision 2, and in reference to all other pools means the same as defined in Minnesota Statutes, section 471.98, subdivision 2.

**Subp. 13. Pool.** "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more political subdivisions for coverage of their respective risks, but also includes private employers for the purpose of a public/private pool. Reference to actions of a pool include actions by the pool's designated agents.

**Subp. 14. Premium.** "Premium" means the amount paid or to be paid for coverage by members. Premium does not include assessments or penalties.

**Subp. 15. Public/private pool.** "Public/private pool" means a workers' compensation pool including as members a political subdivision and one or more private employers.

**Subp. 16. Runoff pool.** "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.

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**Subp. 17. Self-insure.** “Self-insure” means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

**Subp. 18. Service company.** “Service company” means an entity licensed under Minnesota Statutes, section 60A.23, subdivision 8, and rules adopted thereunder, as a self-insurance plan administrator, or an entity named in Minnesota Statutes, section 60A.23, subdivision 8, paragraph (1), clause (a) or (b).

**Subp. 19. Sponsoring association.** “Sponsoring association” means a statewide non-profit organization of political subdivisions that sponsors or organizes a pool, and which has as its primary purpose providing services to Minnesota political subdivisions that are not related to insurance or self-insurance.

**Subp. 20. Surplus.** “Surplus” means a pool’s total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool’s surplus is determined according to the instructions provided for a pool’s financial statements.

**Subp. 21. Workers’ compensation pool.** “Workers’ compensation pool” means a pool that covers workers’ compensation liability, employer’s liability, or both.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## **2785.0200 PURPOSE.**

Parts 2785.0100 to 2785.1600 govern the formation, operation, and dissolution of political subdivision self-insurance pools. They are intended to ensure that the financial integrity of these pools is maintained, and that they are administered competently and equitably.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## **2785.0300 SCOPE.**

The following are subject to the requirements of parts 2785.0100 to 2785.1600:

- A. political subdivision self-insurance pools;
- B. political subdivisions of Minnesota that form, join, or leave a self-insurance pool;
- C. private Minnesota employers that form, join, or leave a self-insurance pool including a political subdivision; and
- D. service companies that provide services to a pool.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## **2785.0400 BYLAWS.**

**Subpart 1. Content.** Bylaws may contain any provisions that do not conflict with parts 2785.0100 to 2785.1600. Bylaws must, at a minimum, contain the following provisions:

- A. the pool’s name, purpose, fiscal year, and initial date of existence;
- B. definitions of key terms;
- C. a statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;
- D. the number, term of office, and method of selection and replacement of the members of the board;
- E. the procedure for calling board meetings;
- F. the method of periodic selection and review of the service company and financial administrator;
- G. the procedure for amending the bylaws;
- H. the procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;
- I. the criteria for membership in the pool, including standards of financial integrity and loss experience;

- J. the procedure for admitting new members to the pool;
- K. the criteria for expelling members from the pool, including nonpayment of premium;
- L. the procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;
- M. a statement of the coverages the pool intends to provide;
- N. the procedure for adding and dropping a member's participation in a particular coverage;
- O. a schedule for premium payments by members and, if applicable, their employees;
- P. the procedure for changing premium rates;
- Q. the procedure for levying and collecting an assessment;
- R. a statement of who may have access to pool funds and for what purposes;
- S. the procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and
- T. the procedure for distributing any assets remaining upon the pool's dissolution.

**Subp. 2. Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. Authority to change the bylaws may not be delegated to a contractor or other outside party. The pool must file bylaw changes with the commissioner not less than 30 days after adoption.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## 2785.0500 BOARD.

**Subpart 1. Structure.** A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership, or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

**Subp. 2. Duties.** The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or parts 2785.0100 to 2785.1600 are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:

- A. fiduciary responsibility for the pool's operation and financial condition;
- B. selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;
- C. on the basis of the pool's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;
- D. approving all reports concerning the pool's operations and status to the commissioner;
- E. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;
- F. authorizing acceptance or rejection of applications for membership;
- G. as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the pool's operation and financial integrity; and

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H. monitoring the pool's compliance with all statutes and rules governing its operation.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## **2785.0600 APPLICATION.**

**Subpart 1. Initial application.** Two or more political subdivisions may apply to the commissioner for authority to form a self-insurance pool. One or more private employers and a political division may apply for authority to form a public/private pool, if statutorily authorized. Applications must be submitted on forms prescribed by the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. Applications submitted without responses to certain questions, or with responses that are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

**Subp. 2. Prior existing pools.** Pools in existence at the time parts 2785.0100 to 2785.1600 are effective must submit their initial application for self-insurance authority no later than December 1, 1985.

**Subp. 3. Renewal application.** Existing plans may apply for renewal of their self-insurance authority by so indicating on their annual status report preceding expiration of their current authority. Applications must be approved or disapproved within 60 days of receipt of the status report.

**Subp. 4. Merger.** Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications are subject to the same requirements as prospective new pools.

**Subp. 5. Approval or disapproval.** Upon approval of an application, the commissioner shall issue an order authorizing the proposed self-insurance pool. Initial authorization orders for new pools shall be effective for 27 months after the initial authorization date. Renewal authorization orders shall be for two-year periods. Approval of applications for authority to self-insure must be granted if the proposed pool conforms with:

- A. all requirements of parts 2785.0100 to 2785.1600;
- B. all applicable requirements of Minnesota insurance statutes and rules, as described in part 2785.0100, subpart 2;
- C. Minnesota Statutes, sections 72A.19 to 72A.32; and
- D. all applicable requirements of other Minnesota statutes and rules.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## **2785.0700 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DIS-SOLUTION.**

**Subpart 1. Ending self-insurance authority.** A pool may decide to end its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within 14 days of such a decision. A pool may not elect to end its self-insurance authority less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance authority does not constitute pool dissolution under subpart 4.

**Subp. 2. Revocation of self-insurance authority.** The commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner judges them to be material:

- A. failure of the pool to comply with parts 2785.0100 to 2785.1600, or with other applicable Minnesota statutes or rules;
- B. failure of the pool to comply with any lawful order of the commissioner;
- C. commission by the pool of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in related rules; or

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D. a deterioration of the pool's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

Subp. 3. **Runoff period.** A pool shall continue to exist as a runoff pool after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage. A runoff pool must continue to comply with parts 2785.0100 to 2785.1600, and with other applicable Minnesota statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of authority under part 2785.0600, subpart 3.

Subp. 4. **Dissolution.** A pool, including a runoff pool, that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a pool or runoff pool from fulfilling its continuing obligations, and does not absolve its members from assessments under part 2785.1400, subpart 3. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

A. the pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

B. the pool has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the pool provided coverage.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## 2785.0800 ADMINISTRATION.

Subpart 1. **Service company.** A pool must contract with a service company for services necessary to the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages the pool provides. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverage. These services include but are not limited to:

- A. accounting and recordkeeping;
- B. billing and collection of premiums and assessments;
- C. claims investigation, settlement, and reserving;
- D. claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;
- E. general administration;
- F. loss control, safety programs, or both; and
- G. underwriting.

Subp. 2. **Financial administrator.** A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. No staff member of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

Subp. 3. **Recordkeeping.** A pool must maintain within Minnesota all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under part 2785.1600. The commissioner may examine the pool's records in order to ascertain the pool's compliance with parts 2785.0100 to 2785.1600, and with other applicable statutes and rules. All records concerning claims, reserves, financial transactions, and other matters necessary for the pool's operations are the pool's property.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## 2785.0900 MEMBERSHIP.

Subpart 1. **Availability.** Pool membership is open only to political subdivisions of Minnesota, except that private employers may join a public/private pool. A pool may establish

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other nondiscriminatory criteria for membership. Nothing in parts 2785.0100 to 2785.1600 requires a pool to accept members that do not meet the pool's underwriting standards.

**Subp. 2. Joining.** New members must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective before the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and parts 2785.0100 to 2785.1600, including joint and several liability. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the Minnesota commissioner of commerce may order that an assessment be levied against the members, if necessary to maintain the pool's sound financial condition.

**Subp. 3. Public/private pool membership.** Only Minnesota domiciled employers whose primary places of employment are within 40 miles of a political subdivision pool member are eligible for membership in a public/private pool. If all political subdivisions elect to withdraw from a public/private pool, the pool's authority to self-insure is terminated simultaneously with the date of the last political division's withdrawal. As a condition of a private employer's membership in a public/private pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer's paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in part 2785.1400, subpart 1. The bond must provide a penalty amount no less than:

A. the greatest one-year premium paid by the member for the coverage through the pool during the past three years;

B. if the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or

C. if the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.

**Subp. 4. Leaving.** The membership agreement must state the procedures for leaving the pool. A member must notify the pool of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under part 2785.1100, subpart 2. Withdrawal is prohibited and void unless:

A. the member has belonged to the pool continuously for the period required by the bylaws, which shall provide for:

(1) a minimum of one complete fund year, in the case of employee health benefit pools; or

(2) a minimum of three complete fund years, in the case of all other pools; and

B. all outstanding premiums and assessments owed by the member have been paid.

**Subp. 5. Expulsion.** No less often than annually a pool must compare the status and experience of each member with the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:

A. a member may be expelled with outstanding premiums or assessments owing; and

B. a member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

**Subp. 6. Runoff pool membership.** After revocation of a pool's self-insurance authority or after a pool notifies the commissioner in writing of its intent to end self-insurance authority voluntarily, no member may join, leave, or be expelled from the pool.

**Statutory Authority:** MS s 471.617 subd 2; 471.982 subd 2

**History:** 10 SR 274

## **2785.1000 COVERAGE.**

**Subpart 1. Distinct pool types.** Employee health benefit pools and workers' compensation pools may provide only the coverages specified in the definitions for that pool type. Oth-

er pools may not provide any of the coverages permitted for employee health benefit pools and workers' compensation pools.

**Subp. 2. Coverage administration and related requirements.** Pools are subject to the requirements of Minnesota statutes and rules applicable to insurance companies providing insurance in Minnesota similar to the pool's coverage. These include requirements contained in Minnesota Statutes, chapters 60A, 62A, 62E, 65A, 65B, 70A, 72A, 72C, 79, and 176, and rules adopted under these chapters, concerning:

- A. filing and requesting approval for coverage documents and rates;
- B. coverage document content and language;
- C. mandated benefits, including coverage conversion and continuation requirements;
- D. coverage administration, including notices to covered parties;
- E. underwriting;
- F. claim administration; and
- G. other practices affecting coverage.

**Subp. 3. Uniform underwriting.** All coverages offered by a pool must be available according to the same underwriting standards to all members and, if applicable, to all members' employees.

**Subp. 4. Continuing responsibility.** Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or ending or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This responsibility ceases only after a pool dissolves under part 2785.0700, subpart 4.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## 2785.1100 PREMIUMS, CASH FLOW, AND DIVIDENDS.

**Subpart 1. Minimum annual premium.** All pools must have and maintain an annual premium volume of no less than \$300,000. A pool or prospective pool may apply to the commissioner for reduction of the minimum annual premium requirement, stating the amount of reduction requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that the lesser premium volume would not compromise its financial integrity and stability.

**Subp. 2. Monitoring premium volume.** A pool must monitor its premium volume. If premium decreases to an annualized volume of less than \$400,000, or less than 133 percent of the amount approved pursuant to subpart 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds \$400,000. "Annualized premium volume" means the gross premiums written for the previous 12 months. If premium decreases to an annualized volume of less than \$300,000, or a lesser amount if approved pursuant to subpart 1, the pool must notify the commissioner:

- A. of its intent to end its self-insurance authority; or
- B. of its proposal for restoring compliance with subpart 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subpart 1 within 90 days, or if after 90 days the pool continues to be out of compliance, the commissioner shall revoke the pool's self-insurance authority.

**Subp. 3. Surplus or stop-loss advancement.** A pool may protect itself from cash flow difficulties by methods including but not limited to the following:

- A. establishing and maintaining a surplus consisting of funds contributed by members and the pool's retained earnings; or
- B. obtaining language in the pool's stop-loss insurance policy requiring the insurer to advance funds to the pool if the policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

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**Subp. 4. New pool deposit premium.** As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made. The following requirements also apply to premium payments in a pool's first year of operation:

A. For all pools except employee health benefit pools, the initial payment must equal no less than 50 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in three or more equal installments at equal intervals throughout the year.

B. For employee health benefit pools, the initial premium payment must be no less than 25 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in six or more equal installments at equal intervals throughout the year.

C. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that a less restrictive payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner must consider arrangements the pool has made under subpart 3 in evaluating the application.

**Subp. 5. Premium payments.** A pool may permit installment payments if payment is always due before premium is to be earned. A pool shall promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.

**Subp. 6. Dividend procedures.** A pool may declare and pay a dividend or distribution from its surplus only if:

- A. the dividend would not cause the pool's surplus to be negative;
- B. the pool does not have a stop-loss advancement liability or other borrowed money; and
- C. for workers' compensation pools, the dividend will not be paid sooner than one year after it is declared, and at the time of payment the conditions of items A and B are fulfilled.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## 2785.1200 RESERVES.

A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as required by the financial statement forms and instructions, under part 2785.1600, subpart 2.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## 2785.1300 STOP-LOSS INSURANCE.

**Subpart 1. Purchase and change.** A pool may purchase stop-loss insurance for indemnification of a portion of its losses. If the pool determines that a stop-loss insurance policy will be terminated or modified causing a violation of subpart 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification taking effect. The pool must indicate what corrective action will be taken.

**Subp. 2. Required stop-loss coverage.** All pools except employee health benefit pools are restricted in the amount of potential liability they may retain on any one incident to ten percent of its annual premium volume during the most recent fund year, plus 20 percent of its surplus. The restriction for pools without a year's experience is based on the pool's estimated premium volume during the first full fund year. All liability in excess of the restricted amount

must be assumed by a stop-loss insurer under contract with the pool and licensed to do business in Minnesota. For employee health benefit pools required to maintain individual excess stop-loss insurance under Minnesota Statutes, section 471.617, subdivision 3, the self-insured retention per person per year shall not exceed \$50,000.

**Subp. 3. Return of liability.** No liability transferred to an insurer under subpart 2 may, directly or indirectly, be returned to a pool or a member.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

### 2785.1400 DEFICIT AND ASSESSMENTS.

**Subpart 1. Joint and several liability.** Each current member is jointly and severally liable for all liabilities and expenses of the pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool during the period of continuing liability. After the period of continuing liability, past members are no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subpart 2. The period of continuing liability for past members varies according to the type of pool, as follows:

A. for employee health benefit pools, past members continue to be jointly and severally liable for three complete fund years after leaving the pool;

B. for workers' compensation pools, past members continue to be jointly and severally liable for ten complete fund years after leaving the pool; and

C. for all other pools, past members continue to be jointly and severally liable for five complete fund years after leaving the pool.

**Subp. 2. Runoff pool liability.** If a pool's self-insurance authority is ended under part 2785.0700, subpart 1 or 2, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until final pool dissolution, as follows:

A. all members at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved; and

B. all past members that were jointly and severally liable under the standards of subpart 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.

**Subp. 3. Correction of a deficit.** If the board determines that the pool's total liabilities exceed its total assets, the board must restore a positive surplus within 90 days after the determination. A deficit may be corrected using one or more of the following types of assessments. A pool may, in a particular case, elect to assess some but not all jointly and severally liable members and past members. Methods of assessment must not exclude liable members or past members arbitrarily, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may state what methods of assessment are preferred. The commissioner must order an assessment to correct a deficit using the procedure described in item A, if the board fails to do so when required.

A. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under part 2785.0700, subpart 1 or 2, shall remain the basis of assessments under this item until final pool dissolution. The assessment base period includes all completed quarters of the current fund year, and includes the following periods depending on the type of pool:

(1) for employee health benefit pools, the most recent three complete fund years;

(2) for workers' compensation pools, the most recent ten complete fund years; and

(3) for all other pools, the most recent five complete fund years.

B. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby members and past members with worse than average losses pay more than those with better loss experience.

C. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby current members pay more than past members.

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D. Jointly and severally liable members and past members may be assessed accordingly to a formula stated in the bylaws, whereby members belonging to the pool in poor loss years pay more than members belonging to the pool in better loss years. .

E. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of items A to D, if the formula is consistent with the requirements of this part.

**Subp. 4. Assessment to increase surplus.** The board may assess current members in order to increase the surplus. The assessment may be made without the existence of a deficit in order to forestall a deficit, or otherwise to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

**Statutory Authority:** MS s 471.617 subd 2; 471.982 subd 2

**History:** 10 SR 274

## 2785.1500 FINANCIAL INTEGRITY.

**Subpart 1. Fidelity bond.** All contractors and individuals who handle pool funds or who will have authority to gain access to pool funds, including board members, must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be \$300,000 or more. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.

**Subp. 2. Integrity of assets.** A pool's assets:

A. must not be commingled with the assets of any member;

B. must not be loaned to anyone for any purpose or used as security for a loan, except as permitted under subpart 5 for investments;

C. must be employed solely for the purposes stated in the bylaws, and in compliance with parts 2785.0100 to 2785.1600 and related statutes; and

D. must not be considered the property or right of any member or covered person, except:

(1) for benefits under the coverage documents;

(2) for dividends declared in accordance with part 2785.1100, subpart 5; and

(3) for a portion of the assets remaining after the plan's dissolution, in accordance with part 2785.0700, subpart 4.

**Subp. 3. Sources and uses of funds.** A pool may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in Minnesota. Except as provided in part 2785.1100, subpart 3, item B, a pool must not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool must not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:

A. its members as premiums, assessments, or penalties;

B. its insurers or indemnitors pursuant to insurance or indemnification agreements;

C. dividends, interest, or the proceeds of sale of investments;

D. refunds of excess payments;

E. coordination of benefits with other insurance or group self-insurance coverages;

F. collection of money owed to the pool;

G. the special compensation fund under Minnesota Statutes, chapter 176, for workers' compensation pools only; or

H. indemnification under Minnesota Statutes, section 176.181, subdivision 5, for workers' compensation pools only. Public/private pools are eligible for indemnification under this part only in the amount of the public members' liability to the pool.

**Subp. 4. Separate accounts.** A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service compa-

ny, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in these special accounts must not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in such accounts must be under the control of the pool's financial administrator.

**Subp. 5. Investments.** A pool's investments are subject to Minnesota Statutes, section 475.66, as regards both permitted types of investments, maturities, and depositories. In addition, a pool must not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any person or entity under contract with the pool. For this purpose, the state of Minnesota is not considered a political subdivision's parent or affiliate.

**Subp. 6. Monitoring financial condition.** The board must regularly monitor the pool's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The board must attempt in good faith to maintain or restore the pool's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in parts 2785.0100 to 2785.1600 and the bylaws. If the commissioner judges that the board's actions are inadequate to maintain or restore the pool's sound financial condition, the commissioner shall, as appropriate: order an increase in the premium rates; revoke the pool's self-insurance authority; or order that an assessment be levied against the members.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*

## 2785.1600 REPORTING.

**Subpart 1. Financial statements.** A pool must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be filed with the commissioner no later than March 1 of each year, or if the pool's fund year is other than the calendar year, no later than 60 days after the end of the pool's fund year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than 180 days after the end of the pool's fund year. For employee health benefit pools, the first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary concerning the balance sheet items that are based on actuarial assumptions and methods. The form of the actuary's statement and the scope of the actuarial review must be according to instructions prescribed by the commissioner.

**Subp. 2. Quarterly reports.** If the commissioner determines that a pool's financial integrity is deteriorating, to the extent that if then-current trends continue for two years or less, the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner shall require the pool to file quarterly reports with the commissioner no later than 30 days after the end of the first, second, and third quarters of each fund year. The commissioner shall remove the requirement to file quarterly reports if the conditions warranting the requirement no longer exist. Quarterly reports must contain statements of the pool's:

- A. current total cash on hand and on deposit, and total investment;
- B. current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;
- C. dividends declared and dividends paid during the quarter;
- D. gross premiums written during the quarter;
- E. losses paid during the quarter;
- F. current total members; and
- G. any other matters the commissioner requests that the board address.

**Subp. 3. Extraordinary audits.** Upon sufficient cause, the commissioner shall require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports, and to report its findings. If necessary for the investigation's purposes, the commissioner shall require a pool to hire a qualified actuary, claims specialist, auditor, or other

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specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner shall require changes in the pool's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under Minnesota Statutes, sections 60A.03, subdivisions 3, 5, and 6, and 60A.031. Sufficient cause includes:

- A. losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;
- B. unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or
- C. other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.

**Subp. 4. Annual status report.** No later than 60 days after the end of a pool's fund year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure, or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner.

**Subp. 5. Penalty.** The financial statements and status report required under subparts 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by parts 2785.0100 to 2785.1600 and related statutes are subject to Minnesota Statutes, section 72A.061, as applicable to licensed insurance companies for comparable filings.

**Statutory Authority:** *MS s 471.617 subd 2; 471.982 subd 2*

**History:** *10 SR 274*