03/26/2026 1208s

2026 SESSION

26-3262
07/05

SENATE BILL ***661-FN***

AN ACT relative to pooled risk management programs.

SPONSORS: Sen. Carson, Dist 14; Sen. Gray, Dist 6

COMMITTEE: Finance

AMENDED ANALYSIS

This bill:

I. Enables the secretary of state to require abatement of insufficient assets or to seek receivership, if necessary, of a pooled risk management program.

II. Requires assessment of each participating member of the pooled risk management program on a pro rata basis to satisfy the amount of the deficiency.

III. Requires the governing board of the pooled risk management program to use a standard of care, diligence, prudence, and skill in the management of the program.

IV. Provides for the assessment of a pooled risk management program's participating members, if required, after an actuarial calculation.

V. Provides for contingency reserve standards depending on the pooled risk management program's line of coverage and requiring a contingency reserve replenishment if a program's contingency reserves fall below the minimum level.

VI. Requires pooled risk management programs to make certain public disclosures to prospective and actual member political subdivisions.

VII. Makes technical corrections to the pooled risk management program chapter.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

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 Management Programs. RSA 5-B is repealed and reenacted to read as follows:

CHAPTER 5-B

POOLED RISK MANAGEMENT PROGRAMS

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 are essential to the proper functioning of political subdivisions; that risk management can be achieved through the purchase of traditional insurance, self-insurance, or participation in pooled risk management programs established for the benefit of 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 that may be returned to the public benefit, and establishment of costs predicated solely on the actual experience of political subdivisions within the state; that the resources of political subdivisions are presently burdened by the securing of insurance protection through standard carriers; and that pooled risk management programs that meet the standards established by this chapter should not be subject to insurance regulation and taxation by the state.

5-B:2 Definitions. In this chapter:

I. "Department" means the department of state.

II. "Informational filing" means an annual filing with the department made solely for the purpose of providing public access to certain information concerning the nature and organization of pooled risk management programs. Such informational filing shall 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 audit required under RSA 5-B:5, I(d);

(e) The pooled risk management program bylaws; and

(f) The annual actuarial evaluation required under RSA 5-B:5, I(h).

III. "Political subdivision" means any city, town, county, school district, chartered public school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units.

IV. "Risk management" means the defense of claims and indemnification for losses arising out of the ownership, maintenance, and operation of real or personal property and the acts or omissions of officials, employees, and agents; the provision of loss prevention services including, but not limited to,

inspections of property and the training of personnel; and the investigation, evaluation, and settlement of claims by and against political subdivisions.

V. “Administration”, as used in RSA 5-B:5, I(f), means reasonable expenses for providing pooled risk management, including but not limited to:

(a) Salaries and benefits, related facilities and operational infrastructure, contract costs for external experts providing direct support of covered services, and other related business expenses, including risk evaluation and wellness programs.

(b) Processing, evaluation, and settlement services incurred in the payment of claims and other related losses.

(c) Auditor, actuarial, legal, and accounting services for administration of the pooled risk program.

(d) Expenses related to oversight services due to non-compliance with the provisions of this chapter.

The reasonableness of an expense for administration under this chapter may be disputed in an examination or administrative hearing commenced by the secretary of state pursuant to RSA 5-B:4-a. In the first instance, the advisory committee shall review questions regarding the reasonableness of expenses under this chapter and provide the secretary of state with their recommendations. If an agreement on the reasonability of an expense cannot be achieved, the secretary of state may take actions pursuant to RSA 5-B:4-a. Any decision on the reasonability of any expense shall be made available to all pooled risk management programs.

VI. “Reserves” means claims reserves, case reserves and incurred but not reported (IBNR) reserves, contribution deficiency reserves, and contingency reserves.

VII. “Contingency reserves” means the amount of surplus to be retained by the pooled risk management program for the upcoming plan year and the following 2 years as may be reasonably established and subsequently required to cover expected and unforeseen or extraordinary claim and administrative losses and liabilities.

VIII. “Excess insurance” means reinsurance.

IX. “Assessments” means a provision that, if the assets of a pooled risk management program are at any time actuarially determined to be insufficient to discharge its claim and administrative losses and liabilities and other legal obligations of the plan, the program shall, within 30 days of such a determination, notify the members of the requirement to provide additional contributions from its existing members for the amount needed to make up the deficiency.

X. "Advisory board" means a committee comprised of the secretary of state designee, the commissioner of the department of insurance designee, and the chief of the consumer protection and antitrust bureau of the office of the attorney general designee.

XI. "Member equity stabilization fund" means funds deposited in a bank as defined in RSA 383-A:2-201(a)(3), pursuant to the criteria set forth in RSA 6:8, for bank deposits on behalf of each member, such as the deposits of excess contingency reserves. This fund’s purpose is to provide additional funds to the contingency reserve fund if the contingency reserve falls below 1/3 of the minimum set forth in RSA 5-B:5, I(f), which should greatly reduce or eliminate the need for an order requiring abatement of the

deficiency per RSA 5-B:4-b. However, nothing in this chapter shall prohibit any pooled risk management program from allowing any member to withdraw any amount from the member equity stabilization fund in excess of the required minimum set forth in RSA 5-B:5, I(g), provided that the pooled risk management program's bylaws allow for such withdrawal.

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; 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.

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. Pooled risk management programs established for the benefit of political subdivisions may provide any or all of the following coverages:

(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.

(h) Unanticipated special education cost recovery.

5-B:4 Informational Filing Required; Fee. Pooled risk management programs established for the benefit of political subdivisions shall make an informational filing, as defined in RSA 5-B:2, II, with the department and shall pay an annual filing fee of $250. 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:6-613 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-B:4-a Authority of the Secretary of State; Investigations; Cease and Desist Orders; Penalties.

I. Notwithstanding any other provision of law, the secretary of state shall have exclusive authority and jurisdiction:

(a) To bring administrative actions to enforce this chapter.

(b) To investigate and impose penalties for violations of this chapter, including but not limited to:

(1) Fines.

(2) Rescission, restitution, or disgorgement.

II. The secretary of state shall have all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by this chapter.

III. For the purpose of any investigation, hearing, or proceeding under this chapter, the secretary of state or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the secretary of state deems relevant or material to the inquiry.

IV. In the event that a person refuses to obey a subpoena issued to him or her or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general or secretary of state or any officer designated by the secretary of state, may issue to the person an order directing him or her to appear before the attorney general or secretary of state, or the officer designated by him or her, to produce documentary evidence if so ordered or to give evidence relative to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt of court.

V. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter.

VI. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter, the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with RSA 421-B:6-613.

VII. The following fines and penalties may be imposed on any person who has violated this chapter.

(a) Any person who, either knowingly or negligently, violates any provision of this chapter or any rule or order thereunder may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed $5,000. Each of the acts specified shall constitute a separate violation.

(b) After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter, or rule or order under this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter.

VIII. Decisions of the secretary of state may be appealed to the supreme court pursuant to RSA 541.

5-B:4-b Insolvency or Financial Impairment.

I. If at the end of any fiscal month, the contingency reserve of a pooled risk management program is at or below 2/3 of the required minimum, the pooled risk management program shall notify its members in writing within 30 days that contingency reserves are below the required minimum and of the actions to be taken if the pooled risk management program's contingency reserve continues to decrease. The member notification shall also contain the status of their member equity stabilization fund account and how it may be used to augment the contingency reserve.

II. If, at the end of any fiscal month, the contingency reserve of a pooled risk management program is at or below 1/3 of the required minimum program, the pooled risk management program shall notify its members and the secretary of state in writing of the contingency reserve deficiency and the actions to be taken, including the use of the member equity stabilization fund, within 5 business days.

III. If the contingency reserve falls below 1/3 of the required minimum after the transfer of available member equity stabilization funds to the contingency reserve, the pooled risk management program shall notify the members and the secretary of state in writing of the contingency reserve deficiency. The secretary of state shall instruct the advisory board to monitor the financial stability of the pool's assets and liabilities and advise the secretary of state of the actions they recommend. If the deficiency persists, the secretary of state shall issue to the pooled risk management program an order requiring abatement of the deficiency.

IV. If the pooled risk management program fails to comply with the order within 30 days after the date of the notice, the secretary of state may apply to and seek from the superior court an order requiring either the pooled risk management program to abate the deficiency or the appointment of a receiver, as the circumstances may require. The pooled risk management program shall reimburse the secretary of state for the cost incurred in seeking such an order.

V. If a pooled risk management program is determined to be insolvent, financially impaired, or otherwise unable to discharge its claim and administrative losses and liabilities and other legal obligations of the plan, each participating member of the program shall be assessed on a pro rata basis calculated by the amount of its annual contribution to satisfy the amount of the deficiency.

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 organized under New Hampshire law.

(b) Be established by political subdivisions exclusively for the benefit of the political subdivisions and 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. Board members shall comply with the provisions of RSA 15-A. Board members shall have a fiduciary responsibility to the member political subdivisions, which includes the duties of good faith and loyalty, avoiding conflicts of interest, and managing the pooled risk management program solely for the benefit of the political subdivisions. Board members shall use a standard of care, diligence, prudence, and skill in the management of the pooled risk management program.

(c) Return of earnings and surplus: All amounts in excess of the maximum contingency reserve, as calculated at the end of each fiscal year, shall be transferred to the member equity stabilization fund. Any amount in excess of the maximum member equity stabilization fund shall be returned to the participating political subdivisions.

(d) Provide for an annual audit of financial transactions by an independent certified public accountant. The audit shall be filed with the department and distributed to participants of each pooled risk management program.

(e) Be governed by written bylaws that shall detail the terms of eligibility for participation by 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.

(f) Establish and maintain a contingency reserve fund for the payment of any amounts required for administration, claims, reserves, and purchase of excess insurance. For a pool providing health line of coverage, the contingency reserve is a minimum of 12 percent and a maximum of 20 percent of member contributions for the current fiscal year. For a pool providing workers' compensation and other property and casualty lines of coverage, the contingency reserve is a minimum of 30 percent and a maximum of 40 percent of member contributions for the current fiscal year. Any amount in excess of these maximum limits shall be transferred to the member equity stabilization fund.

(g) Establish and maintain a member equity stabilization fund of at least 1/3 of their minimum contingency reserve. The sole purpose of this fund is to provide reserve funds to replenish the contingency reserve fund should the contingency fund fall below 1/3 of the required minimum. The bylaws of the pool may establish the maximum level that can be deposited into the member equity stabilization fund. Any surplus in the fund beyond the maximum shall be returned by the program to the members. Any member equity stabilization fund balance held by a pooled risk management program on behalf of a member shall be returned to that member within 3 months of the date of termination of the member’s involvement in that pooled risk management program.

(h) Provide for an annual actuarial evaluation of the pooled risk management program. The evaluation shall assess the reserve, the contingency reserve, and the member stabilization fund. The actuary shall advise the program if the minimum of the member equity stabilization fund, as set by this chapter, or at whatever higher level set by the pooled risk management program’s bylaws, is adequate to ensure a less than 5 percent chance of insolvency in the next 3 years and shall take necessary steps to

adjust the minimum member equity stabilization fund balance to be at or greater than the actuary's recommendation. 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.

(i) The actuarial evaluation shall calculate contributions and assessments required to fund the program and bring the program into compliance with the minimums required for the contingency reserve and the member equity stabilization fund. Contribution rates charged in any given year to each member may not be lower than the amounts indicated by reasonable actuarial analysis. Contribution rate relativities shall be updated at least every 5 years.

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

II. Initial funding, replenishment, and use of the contingency reserve and the member equity stabilization fund shall be as follows:

(a) Initial funding of the contingency reserve and the member equity stabilization fund shall be at least 1/2 of the required minimum or as authorized by the department.

(b) Replenishment of the contingency reserve and the member equity stabilization fund shall be at least 68 percent annually of the amount the funds are below the minimums. Alternate replenishment percentages may be authorized by the department.

(c) The member equity stabilization fund shall be used to bring the contingency reserve back to 1/3 of the minimum allowed whenever the contingency reserve fund falls below that limit. If the bylaws permit, the board of directors, by a 2/3 vote, may transfer any amount in the member equity stabilization fund that is above the minimum required to the members or to the contingency reserve fund. Transfers to the contingency reserve fund shall not cause the fund to exceed the maximum allowed.

(d) The risk management program member equity stabilization funds may be invested as determined by the board of directors, and any earnings on fund monies shall be added to that member's equity stabilization fund.

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

IV. Any such program operating under this chapter shall publicly and conspicuously disclose, by including a written disclaimer in any and all member agreements, contracts, bylaws, and contribution quotes and renewals between the program and its prospective and actual member political subdivisions, that, at a minimum, notifies the political subdivision of the following:

(a) The pooled risk management program does not function like an insurance company and is not an insurer.

(b) The pooled risk management program, to the extent it is self-insured, does not provide guaranteed cost or fixed cost coverages.

(c) The pooled risk management program may collect from participating members' assessments or replenishments whenever required in the event the program's assets are insufficient to discharge its claim and administrative losses and liabilities and other legal obligations of the plan, in the event of insolvency, or in the event contingency reserves fall below the required minimum under this chapter.

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 shall be privileged and confidential and not subject to disclosure to any third party or disclosure under RSA 91-A.

5-B:8 Dissolution of a Pooled Risk Management Program.

I. A voluntary or involuntary dissolution of a pooled risk management program established under this chapter shall occur in accordance with the dissolution requirements under New Hampshire law applicable to the legal entity operating such program.

II. Notwithstanding the foregoing and any provision of law to the contrary, and in accordance with Section 115 of the Internal Revenue Code, in the event of any dissolution of any pooled risk management program under this chapter, after all legal debts, liabilities, and obligations of the program have been finally discharged or satisfied, all remaining assets, if any, shall be liquidated and shall be distributed pro-rata to the members of the respective coverage lines as of the last day of the last full pool year of such coverage line prior to the decision to dissolve. Such net assets shall be distributed, separately by coverage line, by calculating each member's relative percentage of the total member contributions to the coverage line for such pool year.

2 Effective Date. This act shall take effect 60 days after its passage.

VETOED June 19, 2026 / Veto Sustained August 19, 2026.

LBA
26-3262
5/8/26

SB 661-FN- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENT #2026-1208s)

AN ACT relative to pooled risk management programs.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
Revenue	$0	$0	$0	$0
Revenue Fund(s)	None			
Expenditures*	$0	($250,000+)	($250,000+)	($250,000+)
Funding Source(s)	General Fund			
Appropriations*	$0	$0	$0	$0
Funding Source(s)	None			

*Expenditure = Cost of bill *Appropriation = Authorized funding to cover cost of bill

Estimated Political Subdivision Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
County Revenue	$0	$0	$0	$0
County Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Local Revenue	$0	$0	$0	$0
Local Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill introduces measures to ensure the financial stability of pooled risk management programs. It allows the Secretary of State to address insufficient assets and seek court appointed receivership if necessary. Pools providing health coverage must maintain a contingency reserve with a minimum of 12 percent and a maximum of 20 percent of annual contributions. Pools providing workers' compensation and other property and casualty lines of coverage must maintain a contingency reserve with a minimum of 30 percent and a maximum of 40 percent of annual contributions. Any funds exceeding the maximum reserve limits shall be transferred to the member equity stabilization fund. The bill also requires pooled risk management programs to establish a member equity stabilization fund equal to at least one-third of the minimum contingency reserve to help cover program assessments and other obligations. Additionally, the bill requires greater transparency through public disclosures for program members.

The Department of State indicates that this bill will save $250,000+ in general funds each year and securities funds that go unspent will lapse back to the General Fund. The anticipated savings are from the reduced need to hire external legal and actuarial experts that help the state bring legal action against pooled risk management programs that are not acting as a fiduciary to their participating members.

The New Hampshire Municipal Association (NHMA) states that this bill would require municipalities participating in pooled health plans to set aside extra funds in reserve accounts to cover potential financial shortfalls. If the health pool's reserves drop too low or if it becomes insolvent, municipalities would face additional financial obligations through special assessments. They would also need to rebuild reserve accounts over time if used. Municipalities must agree in writing to take responsibility for these potential financial risks, including any losses from the prior year if they leave the pool. This could lead to increased costs and challenges for municipalities, especially since raising extra funds may require special town meetings.

The New Hampshire Association of Counties (NHAC) states that this bill could lead to an indeterminable increase in expenditures for counties involved in pooled risk management programs. The potential increase stems from the need to gather additional contributions from members if an annual audit, actuarial determination, or Secretary of State investigation reveals insufficient assets. Additionally, there could be administrative costs that would be taken on by pool members also increasing expenditures.

AGENCIES CONTACTED:

Department of State, New Hampshire Municipal Association, and New Hampshire Association of Counties