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HOUSE BILL ***1491***

AN ACT relative to pooled risk management programs.

SPONSORS: Rep. Hunt, Ches. 14; Rep. Porcelli, Rock. 19; Sen. Innis, Dist 7; Sen. Perkins Kwoka, Dist 21

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill establishes and regulates political subdivision risk management programs, sets eligibility and reporting requirements, defines oversight and enforcement authority, outlines financial, investment, and solvency standards, and affirms tax exemptions and confidentiality provisions for such programs.

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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 New Chapter; Political Subdivision Risk Management Programs. Amend RSA by inserting after chapter 420-Q the following new chapter:

CHAPTER 420-R

POLITICAL SUBDIVISION RISK MANAGEMENT PROGRAMS

420-R:1 Purpose. The purpose of this chapter is to provide for the establishment of political subdivision 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 or by 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, which 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 risk management programs that meet the standards established by this chapter should not be subject to taxation by the state and, except as specifically set forth in this chapter, should not be subject to insurance regulation.

420-R:2 Definitions; Scope of Chapter. In this chapter:

I. "Authorized control level event" means any of the following events:

(a) The filing of a Risk-Based Capital “RBC” report by the program indicating that the program's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the program of an adjusted RBC report that indicates the event in subparagraph (a); or

(c) The failure of the program to respond to a corrective order in a manner satisfactory to the commissioner.

II. “Commissioner” means the commissioner of the department of insurance.

III. "Company action level event" means the filing of an RBC report by a program indicating that:

(a) The program's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(b) For life and/or ancillary health coverages, the political subdivision risk management program has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and has a negative trend; or

(c) For property and casualty or employee health plan coverages, the program has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC instructions.

IV. “Department” means the department of insurance.

V. “Excess insurance” means stop-loss insurance for health insurance claims and high-dollar value coverage above a primary layer for property and casualty insurance claims.

VI. "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report that indicates that the program's total adjusted capital is less than its mandatory control level RBC; or

(b) Notification by the commissioner to the program of an adjusted RBC report that indicates the event in subparagraph (a).

VII. “Member” means any political subdivision that participates in a risk management program under this chapter.

VIII. “NAIC” means the National Association of Insurance Commissioners.

IX. “Nonprofit organization” means any entity that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(6), or 501(c)(12) of the Internal Revenue Code of 1986, or any subsequent corresponding Internal Revenue Code of the United States, as amended.

X. "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.

XI. “Political Subdivision Risk Management Program” or “program” means any formal arrangement established or maintained by 2 or more political subdivisions for the purpose of jointly covering risk that is not organized and operated as an assessable risk pool regulated in accordance with the requirements of RSA 5-B.

XII. "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

XIII. "RBC level" means a program's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means the product of 2.0 and its authorized control level RBC.

(b) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions.

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

XIV. "RBC plan" means a comprehensive financial plan containing the following elements:

(a) Conditions that contribute to the company action level event;

(b) Proposals of corrective actions that the program intends to take and would be expected to result in the elimination of the company action level event;

(c) Projections of the program's financial results in the current year and at least the 4 succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and/or surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Key assumptions impacting the program's projections and the sensitivity of the projections to the assumptions; and

(e) The quality of, and problems associated with, the program's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case. If the commissioner rejects the RBC plan, and it is revised by the political subdivision risk management program, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

XV. "Regulatory action level event" means any of the following events:

(a) The filing of an RBC report by the program that indicates that the program's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The failure of the program to file an RBC report by the filing date, unless the program has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within 10 days after the filing date;

(c) Notification by the commissioner to the program that the RBC plan or revised RBC plan submitted by the program is, in the judgment of the commissioner, unsatisfactory; or

(d) Notification by the commissioner to the program that the program has failed to adhere to its RBC plan or revised RBC plan, but only if such failure has a substantial adverse effect on the ability of the program to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification.

420-R:3 Declaration of Status; Tax Exemption.

I. Any arrangement authorized and 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 arrangement shall not constitute doing an insurance business for purposes of regulation or taxation. Such self-insurance arrangements shall not be subject to the premium tax under RSA 400-A:32 and shall not be subject to assessment with respect to the administration fund under RSA 400-A:39.

II. Any such arrangement operating under this chapter, whether or not a body corporate, trust, or charter, may sue or be sued, make contracts, hold and dispose of real property, borrow money, contract debts, and pledge assets in its name.

III. Political subdivision risk management programs shall be governed by this chapter and shall be exempt from this title, except for the provisions of:

(a) RSA 400-A:16, relative to investigations;

(b) RSA 400-A:17 through RSA 400-A:24, relative to hearings and appeals;

(c) RSA 400-A:37, relative to examinations;

(d) RSA 402-B, relative to insurance claims adjusters;

(e) RSA 402-J, relative to producer licensing;

(f) RSA 417:1 through 417:31, relative to unfair trade practices and fraud investigations; and

(g) RSA 420-G:11, II, II-a, and IV, relative to the submission of claims data to the department.

IV. This section does not apply to or provide exemptions for insurance companies issuing policies to cover the arrangement, third-party administrators, insurance producers, or other licensees subject to RSA Title XXXVII servicing the political subdivision risk management program.

V. RSA 5-B shall not apply to political subdivision risk management programs.

420-R:4 Agreement to Form; Authorized Activities.

I. To accomplish the purposes of this chapter, any 2 or more political subdivisions of this state may, by resolution of their governing bodies, establish and enter into agreements to form a nonprofit organization, association, or trust under the laws of this state to carry out the activities of a political subdivision risk management program.

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. Political subdivision 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 retirees and their dependents.

(g) Life, income maintenance, accidental death and dismemberment, vision loss or impairment, or legal benefits for employees and their dependents.

IV. Any political subdivision risk management program that provides coverage described in subparagraphs III (a) through (e) shall not also provide coverages described in subparagraphs (f) or (g).

V. If provided for in the organizational documents, a political subdivision risk management program may, in conformance with this chapter:

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

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

(c) Jointly purchase insurance and reinsurance coverage in a form and amount as provided for in the organizational documents;

(d) Obligate the participants to pledge funds or revenues to secure the obligations or pay the expenses of the arrangement, including the establishment of a reserve fund for coverage and any other financial arrangements if the reserve fund or the arrangement's revenue or assets are insufficient to cover the liabilities; and

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

VI. Any program operating under this chapter, whether or not 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.

VII. Participation by a political subdivision in a political subdivision 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 political subdivision risk management program or any other political subdivision participating in the program.

420-R:5 Formation.

I. Before the establishment of a political subdivision risk management program, the program shall obtain the approval of the commissioner. The political subdivisions proposing the creation of the program shall submit a plan of management and operation to the commissioner that provides, at a minimum, the following information:

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

(b) The amount and method of funding the covered risks, including the initial capital and proposed rates and projected premiums. The commissioner shall require deposits, surplus requirements, or other financial security reasonably necessary to ensure the solvency and financial integrity of the program, including deposits of not less than $300,000 for property and casualty lines and $500,000 for health-related coverages, in cash, securities authorized for savings banks, or such other investments as approved by the commissioner;

(c) The proposed claim reserving practices;

(d) The proposed purchase and maintenance of insurance, or excess insurance in excess of the amounts retained by the joint self-insurance arrangement;

(e) The legal form of the program, including, but not limited to, any constitution, articles of incorporation, bylaws, charter, trust, or other agreement among the participating entities;

(f) The agreements with participants in the arrangement defining the responsibilities and benefits of each participant and management;

(g) The proposed accounting, depositing, and investment practices of the arrangement;

(h) Evidence satisfactory to the commissioner showing that the arrangement will be operated in accordance with sound actuarial principles;

(i) A designation of the individual to whom service of process must be forwarded by the commissioner on behalf of the arrangement, including that individual’s name and address;

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

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

(l) A legal analysis or an Internal Revenue Service opinion on the federal income tax exposure or liability of the program;

(m) The names and addresses of the directors of the arrangement, who are subject to approval by the commissioner upon the presentation of sufficient evidence to:

(1) Be competent;

(2) Have not been found to be guilty of, or to have pled guilty or no contest to, a felony or a crime involving moral turpitude;

(3) Have not had any type of professional license revoked in this or any other state; and

(4) Have not improperly manipulated assets, accounts, or specific excess insurance or otherwise acted in bad faith;

(n) A copy of a fidelity bond in an amount equal to not less than 12 percent of the funds handled annually and issued in the name of the arrangement covering its officers, trustees, employees, administrator, or other individuals managing or handling the funds or assets of the arrangement. In no case may such bond be less than $1,000,000 or more than $5,000,000, except that the commissioner may prescribe an amount more than $5,000,000 following a hearing. In lieu of a surety bond, the posting of the requisite surety in cash in an account where investment or interest earnings on the surety funds may be swept by the pool and allocated to operations, reserves, or surplus, as the case may be;

(o) A statement from legal counsel attesting that there are no pending regulatory enforcement actions against the entity; and

(p) Such additional information as the commissioner may reasonably require to determine compliance with this chapter.

II. The commissioner shall not approve the arrangement unless the commissioner determines the following:

(a) The plan is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles; and

(b) The program meets the requirements of RSA 420-R:6.

III. Any pooled risk entity operating in accordance with RSA 5-B as of July 1, 2026, may seek conditional approval. The commissioner may authorize such a program that does not currently meet the requirements of this chapter to operate as a political subdivision risk management program under a conditional approval for a period not to exceed 2 years while the organization works to meet all the requirements of this chapter.

IV. Any entity that does not meet the requirements of RSA 5-B and has been found to be operating without the commissioner's approval shall be subject to an administrative fine not to exceed $10,000 for each day it has operated without the commissioner's approval.

420-R:6 Requirements of Organization and Operation.

I. A political subdivision risk management program shall meet the following minimum eligibility requirements and any additional requirements that the commissioner may require:

(a) The arrangement shall qualify as a non-profit entity or not-for-profit trust;

(b) Operated pursuant to an agreement by a board of directors, which shall have complete fiscal control over the arrangement and which shall be responsible for all operations of the arrangement. The directors shall be elected officials or employees of one or more political subdivisions in the arrangement. A director may not be an owner, officer, or employee of the administrator or service company of the arrangement. The directors shall have the authority to approve applications of association members for participation in the arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the arrangement.

(c) Neither offered nor advertised to the public generally.

(d) Operated in accordance with sound actuarial principles.

II. The following activities shall be prohibited:

(a) An employee or official of a participating political subdivision shall not directly or indirectly receive anything of value for services rendered in connection with the operation and management of the arrangement other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the arrangement.

(b) An employee or official of a participating political subdivision shall not accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the arrangement.

III. The commissioner shall not grant or continue approval of a program until such time as the program replaces any director found by the commissioner, upon the presentation of sufficient evidence:

(a) To be incompetent;

(b) To be guilty of, or to have pleaded guilty or no contest to, a felony or a crime involving moral turpitude;

(c) To have had any type of insurance license revoked in this or any other state;

(d) To have improperly manipulated assets, accounts, or specific excess insurance or to have otherwise acted in bad faith.

IV. Directors shall comply with the provisions of RSA 15-A. Directors shall have a fiduciary responsibility to act in the best interest of the political subdivision risk management program, which shall include a duty of care to ensure prudent investment and use of assets, a duty of loyalty to act to further the purposes and mission of the program, and a duty of obedience to comply with organizational bylaws and applicable law.

420-R:7 Termination of Arrangement. If an arrangement is terminated for any reason, it shall pay all outstanding claims, debts, and obligations. The arrangement may retain sufficient funds to provide coverage for such additional period as the board of the arrangement considers prudent. In addition, the program may purchase such additional insurance as they consider necessary for protection against potential future claims. Any funds remaining in the arrangement after satisfaction of all obligations upon termination shall be paid to participating entities as of the termination date in some equitable manner meeting with the approval of the commissioner, including, without ruling out other alternatives, equally on a per capita basis to each participating entity that is covered under the arrangement as of the effective date of termination.

420-R:8 Approval of Rates.

I. Each political subdivision risk management program shall file with the insurance commissioner a full schedule of the rates to be paid by participating members and shall obtain the commissioner's approval prior to implementing any rate changes. Rates, rating factors, and all rules necessary for the calculation of members' contributions shall be filed with the commissioner at least 60 days prior to implementation along with all relevant actuarial support that justifies the selection of rates. The commissioner may refuse such approval if he or she finds the rates are excessive, inadequate, or unfairly discriminatory.

II. All underlying information submitted to justify the rates to the extent the information therein is not otherwise required to be publicly available, which is filed with the commissioner, constitutes information that might be damaging to the risk pool management program if made available to competitors and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or the applicable provisions of Title XXXVII.

III. All approved rates and rating manuals shall be publicly available.

420-R:9 Financial Reporting.

I. Each political subdivision risk management program shall prepare and file or transmit to the commissioner an annual statement and subsequent quarterly statements under oath, in accordance with the National Association of Insurance Commissioners Annual Statement Blank following the National Association of Insurance Commissioners Annual Statement Instructions and those accounting procedures and practices prescribed by the National Association of Insurance Commissioners Accounting Practices and Procedure Manual or allowed as a permitted accounting practice as provided in the manual.

II. The annual statement shall be due on or before March 1 each year. The commissioner may extend the time for filing or transmitting such statement for cause shown and may approve an alternative submission date. The commissioner may refuse to continue, or may suspend or revoke, the approval for any political subdivision risk management program that fails to file or transmit its annual statement when due.

III. In addition to the above, the commissioner may require from any person or entity subject to this title:

(a) Statements, reports, including reports audited by independent public accountants, answers to questionnaires, and other information and evidence thereof, in whatever reasonable form the commissioner designates and at such reasonable intervals as the commissioner may choose, or from time to time;

(b) Full explanation of the programming of any data storage or communications systems in use; and

(c) That information from any books, records, electronic data processing systems, computers, or any other information storage system be made available to him at any reasonable time and in any reasonable manner.

IV. Any officer, manager, or general agent; any person with executive authority over or in charge of any segment of such political subdivision risk management program's affairs; and any insurance agent or other person licensed under the insurance code shall reply promptly in writing or in other designated form to any written inquiry from the commissioner requesting a reply.

V. The commissioner may require that any communication made to him under this section be verified.

VI. In the absence of actual malice, no communication required by the commissioner under this section shall subject the person making it to an action for damages for defamation.

VII. The information obtained pursuant to this section shall be privileged.

VIII. Any director, officer, agent, or employee of a political subdivision risk management program who subscribes to, makes, or concurs in making or publishing any annual or other statement required by law, having actual knowledge that the same contains any material statement that is false, shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

IX. The commissioner may retain, without appropriation under RSA 9 and without qualifying as a department expenditure under RSA 4:15, attorneys, independent actuaries, independent certified public accountants, or other professionals or specialists to review financial statements, the cost of which shall be borne by the company that is the subject of the financial analysis. The political subdivision risk management program shall pay the retained professionals or specialists directly for their costs. The commissioner shall conduct oversight of such independent reviewers in a manner that is consistent with standards for the use of independent reviewers established by the National Association of Insurance Commissioners in its Financial Condition Examiners Handbook and shall ensure that costs are reasonable for the work performed.

420-R:10 Risk-Based Capital.

I. Every political subdivision risk management program shall, on or prior to each March 1, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions for programs.

II. For life and/or ancillary health coverages, RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account, and may adjust for, the covariance between:

(a) The risk with respect to the program's assets;

(b) The risk of adverse insurance experience with respect to the program's liabilities and obligations;

(c) The interest rate risk with respect to the program's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

III. For property and casualty coverages, RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions, determined in each case by applying the factors in the manner set forth in the RBC instructions.

IV. For employee health plan coverages, RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

V.(a) In the event of a company action level event, the program shall, within 45 days of the event, prepare and submit to the commissioner an RBC plan. Within 60 days after the submission of an RBC plan to the commissioner, the commissioner shall notify the program whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the program shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the program shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner.

(b) In the event of a regulatory action level event, the commissioner shall:

(1) Require the program to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the program, including a review of its RBC plan or revised RBC plan; and

(3) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required.

(c) In the event of an authorized control level event, the commissioner shall:

(1) Take such actions as are required with respect to which a regulatory action level event has occurred; or

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the political subdivision risk management program and of the public, take such actions as are necessary to cause the political subdivision risk management program to be placed under regulatory control.

(d) In the event of a mandatory control level event, the commissioner shall take such actions as are necessary to place the political subdivision risk management program under regulatory control. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

VI. Any action by the commissioner related to RBC shall be a basis for requesting a hearing pursuant to RSA 400-A:17, II(b). The program shall have the right to request a confidential departmental hearing, on the record, at which the program may challenge any determination or action by the commissioner. The program shall notify the commissioner of its request for a hearing within 5 days after the notification by the commissioner. Upon receipt of the program's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than 10 and no more than 30 days after the date of the program's request.

VII.(a) The commissioner may apply by verified petition to the superior court for Merrimack county or for the county in which the principal office of the program is located for an order directing him or her to take control of the program on any one or more of the following grounds:

(1) The program has encountered an authorized or mandatory control event;

(2) The commissioner has reasonable cause to believe that there has been embezzlement from the program, wrongful sequestration or diversion of the program's assets, forgery or fraud affecting the program, or other illegal conduct in, by, or with respect to the program that, if established, would endanger assets in an amount threatening the solvency of the program;

(3) That information coming into the commissioner's possession has disclosed substantial and not adequately explained discrepancies between the program's records and the most recent annual report or other official program reports;

(4) That the program has failed to remove any person who in fact has executive authority in the political subdivision risk management program, whether an officer, manager, general agent, employee, or other person, if the person has been found by the commissioner after notice and hearing to be dishonest or untrustworthy in a way affecting the program's business;

(5) That any person who in fact has executive authority in the program, whether an officer, manager, general agent, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the program has failed promptly and effectively to terminate the employment and status of the person and all his influence on management;

(6) That after demand by the commissioner the program has failed to submit promptly any of its own property, books, accounts, documents, or other records, or those of any company contracted to provide services to the program, or those of any person having executive authority in the program so far as they pertain to the program, to reasonable inspection or examination by the commissioner or an authorized representative. If the program is unable to submit the property, books, accounts, documents, or other records of a person having executive authority in the program, it shall be excused from doing so if it promptly and effectively terminates the relationship of the person to the program;

(7) That without first obtaining the written consent of the commissioner, the political subdivision risk management program has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(8) That the directors of the program are deadlocked in the management of the political subdivision risk management program's affairs and that the members or shareholders are unable to break the deadlock and that irreparable injury to the political subdivision risk management program, its creditors, its policyholders, or the public is threatened by reason thereof;

(9) That the program has failed to pay for 60 days after the due date any obligation to this state or any political subdivision thereof or any judgment entered in this state, except that such nonpayment shall not be a ground until 60 days after any good faith effort by the program to contest the obligation has been terminated, whether it is before the commissioner or in the courts;

(10) That the program has failed to file its annual report or other report within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately;

(11) That 2/3 of the board of directors consent to regulatory control under this chapter.

(b) An order for regulatory control shall appoint the commissioner and successors in office as the controlling authority and shall direct the controlling authority forthwith to take possession of the assets of the program and to administer them under the orders of the court. The filing or recording of the order with any register of deeds in the state imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds. Any order issued under this section shall require accountings to the court by the controlling authority. Accountings shall be at such intervals as the court specifies in its order, but no less frequently than semi-annually.

(c) The commissioner as the controlling authority shall make every reasonable effort to employ a qualified expert to serve as special deputy commissioner to correct the issue that led to regulatory control. The special deputy shall have all of the powers of the controlling authority granted under this section. Subject to court approval, the commissioner shall make such arrangements for compensation as are necessary to obtain a special deputy of proven ability. The special deputy shall serve at the pleasure of the commissioner.

(d) Subject to court approval, the controlling authority may take such action as is deemed necessary or expedient to reform and revitalize the program. The controlling authority shall have all the powers of the directors, whose authority shall be suspended, except as they are redelegated by the controlling authority. The controlling authority shall have full power to direct and manage, hire and discharge employees subject to any contract rights they may have, require the collection of funds from political subdivisions comprising the program, and deal with the property and business of the program.

(e) If the controlling authority finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the controlling authority by any officer, manager, agent, broker, employee, or other person, they may pursue all appropriate legal remedies on behalf of the program.

(f) The controlling authority may at any time petition the court for an order terminating the regulatory control of the program. If the court finds that grounds for regulatory control no longer exist, it shall order that the program be restored to possession of its property and the control of its business. The court may also make that finding and issue that order at any time upon its own motion.

VIII. Regardless of its RBC level, any dividend, return of capital, or return of premium proposed by the board of a program shall be reviewed and approved prior to distribution by the commissioner under such terms as outlined in RSA 401-B:5, II, as are applicable to political subdivision risk management programs as determined by the commissioner.

420-R:11 Investments.

I. The assets of any political subdivision risk management program shall invest and keep invested all its funds only in the following U.S. dollar-denominated, high-quality instruments, except such cash as may be required in the transaction of its business:

(a) Cash and Cash Equivalents. Cash on deposit; FDIC-insured deposits pursuant to the criteria set forth in RSA 6:8; high-quality certificates of deposit; SEC Rule 2a7 compliant money market funds; and short-dated U.S. Treasury bills and notes.

(b) U.S. Government Obligations. Obligations issued or fully guaranteed by the United States, including full-faith-and-credit agencies such as GNMA (Ginnie Mae – Government National Mortgage Association).

(c) U.S. Agency Obligations. Obligations issued by U.S. Government Sponsored Enterprises including FHLB (Federal Home Loan Bank), FNMA (Fannie Mae – Federal National Mortgage Association), and FHLMC (Freddie Mac – Federal Home Loan Mortgage Corporation), rated NAIC 1 or NAIC 2 (or A/A3 or better).

(d) Municipal Obligations. General obligation or essential service revenue bonds of U.S. states and political subdivisions rated NAIC 1 or NAIC 2 (or A/A3 or better), including pre-refunded obligations backed by U.S. Treasury or agency collateral.

(e) Corporate Bonds. Senior unsecured or secured corporate debt, nonconvertible and without payment-in-kind features, rated NAIC 1 or NAIC 2 (or A/A3 or better).

(f) Mortgage-Backed Securities.

(1) Agency mortgage-backed securities issued or guaranteed by FNMA (Fannie Mae – Federal National Mortgage Association), FHLMC (Freddie Mac – Federal Home Loan Mortgage Corporation), or GNMA (Ginnie Mae – Government National Mortgage Association), including passthroughs and CMOs (Collateralized Mortgage Obligations), limited to senior tranches rated NAIC 1.

(2) Private label mortgage-backed securities limited to senior tranches rated NAIC 1, with no synthetic, reREMIC, or complex structures.

(g) Asset-Backed Securities (“ABS”). Prime auto, credit card, and equipment ABS backed by granular collateral and limited to senior NAIC 1 tranches. CLOs, CDOs, resecuritizations, and synthetic structures are prohibited.

(h) Bank Obligations. Bankers’ acceptances and certificates of deposit issued by U.S. institutions rated A/A3 or better, nonstructured, U.S. dollar denominated, and with a maturity not exceeding 5 years.

(i) Repurchase Agreements. Triparty or centrally cleared repurchase agreements collateralized solely by U.S. Treasury or U.S. agency securities, with daily margining and customary haircuts. Counterparties must be rated A/A3 or better.

(j) Real Estate for the Accommodation of Business. Real estate used for the political subdivision risk management program's operational accommodation, subject to RSA 402:29-d, V. Excess rentable space must meet investment-grade tenancy standards. Exposure to real estate shall not exceed 5 percent of admitted assets.

(k) Securities Lending. Permitted only if: collateral is cash or U.S. Treasury or agency securities; collateral is maintained at a minimum of 102 percent and marked to market daily; aggregate exposure does not exceed 10 percent of admitted assets; per counterparty exposure does not exceed 2 percent; and collateral securities may not be reused other than to acquire equivalent securities.

(l) Mutual Funds. Shares of open-ended investment companies registered under the Investment Company Act of 1940, limited to SEC Rule 2a7 money market funds or funds investing only in U.S. Treasury and U.S. agency securities.

(m) Supranational Obligations. U.S. dollar-denominated obligations of the International Bank for Reconstruction and Development, InterAmerican Development Bank, African Development Bank, or Asian Development Bank, rated NAIC 1.

(n) Basket Provision. Up to 2 percent of admitted assets may be invested in instruments not otherwise listed, provided such instruments are NAIC 1 and U.S. dollar denominated.

II. Common or preferred stock; equity rights or warrants; convertible securities; private equity; hedge funds; commodities; cryptocurrencies or digital assets; below-investment-grade fixed income; structured credit, including CLOs and CDOs; synthetic securities; foreign-currency-denominated assets; and all derivative instruments of any type are prohibited.

III. At least 20 percent of admitted assets shall be held in cash and cash equivalents as defined in subsection I(a).

IV. "Highly rated" means Securities Valuation Office of the NAIC designation 1 or 2, or NRSRO (Nationally Recognized Statistical Ratings Organization) rating of A/A3 or better. NAIC designations govern statutory purposes.

V. The political subdivision risk management program shall maintain procedures to monitor credit quality and shall implement documented remediation actions for any security that falls below NAIC 2/A-.

VI.(a) The political subdivision risk management program's portfolio of fixed-income investments, excluding cash and cash equivalents, shall maintain a weighted average life not to exceed 3 years.

(b) No individual fixed-income instrument shall have a final contractual maturity greater than 12 years.

(c) For amortizing securities, weighted average life shall be calculated using reasonable, supportable expectations of prepayment and default.

(d) The political subdivision risk management program shall not acquire securities whose stated maturity exceeds 12 years, securities whose weighted average life cannot be reasonably estimated, or instruments designed to produce extension risk inconsistent with these limits.

(e) Securities held as admitted assets on the effective date of this subsection that exceed these limits may be retained but not added to or replaced with instruments of similar structure or maturity.

420-R:12 Examinations and Investigations.

I. The commissioner shall make an examination of each political subdivision risk management program under the terms of RSA 400-A:37 as often as deemed necessary, but not less frequently than once in every 5 years. All examinations shall be conducted at the expense of the program.

II. Each program shall submit its books and records relating to its operations to such examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths to, and examine the officers and agents of the program.

III. The commissioner may investigate the acts of a political subdivision risk management program pursuant to RSA 400-A:16.

420-R:13 Enforcement Authority.

I. The commissioner may suspend or revoke the approval, issue an order requiring a specific action, or assess an administrative fine for any program for any of the following causes:

(a) The approval of the arrangement was obtained by fraud;

(b) There were one or more material misrepresentations in the materials submitted to gain the approval;

(c) The program has shown itself untrustworthy or incompetent relative to the management or operation of the arrangement;

(d) The program has failed to meet the financial requirements of this chapter or has violated any lawful order or rules;

(e) The program has refused to be examined or to produce its accounts, records, and files for examination or has refused to give information with respect to its affairs or to perform any other legal obligation as to such examination when so required by the commissioner;

(f) The program has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final;

(g) The program no longer meets the requirements for the authority originally granted;

(h) The program has violated any lawful order or rule of the commissioner, provision of this chapter, or other applicable law;

(i) The program is not fulfilling its contracts in good faith;

(j) The program is conducting business fraudulently or in a manner hazardous to its covered persons, members, creditors, the public, or the business; or

(k) The program is acting outside its authority.

II. Prior to suspending or revoking the program's approval, the commissioner shall provide written notification to the program specifying the basis of the noncompliance and requiring that the deficiency or deficiencies which exist be corrected.

III. After such notice, the program shall have a 30-day period in which to comply with the commissioner's request for correction or the submission of a corrective action plan. If the program fails to comply, the commissioner shall issue a notice of hearing pursuant to RSA 400-A:18.

420-R:14 Appeals. All orders and decisions of the commissioner concerning matters within the commissioner's jurisdiction under this chapter shall be subject to hearing and appeal as provided in RSA 400-A:15 through 24 and RSA 541. RSA 541:18 shall apply to orders and decisions of the commissioner affecting the rates of the program.

420-R:15 Rulemaking Authority. The commissioner may adopt rules in accordance with RSA 541-A, which are reasonable and necessary to administer and enforce the provisions of this chapter.

420-R:16 Confidentiality and Transparency.

I. Notwithstanding any provision of the law to the contrary, any information of any political subdivision 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.

II. Except as provided in paragraph I, political subdivision risk management programs formed or affirmed under this chapter are subject to the requirements of RSA 91-A.

III. Political subdivision risk management programs' annual financial statements shall be made public.

420-R:17 Severability. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this chapter, which can be given effect without the invalid provision or application, and to that end, the provisions of this chapter are severable.

2 Repeal. RSA 420-R:5, III, relative to the formation of political subdivision risk management programs, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect July 1, 2029.

II. The remainder of this act shall take effect July 1, 2026.

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