MONTANA LEGISLATURE
OFFICE OF RESEARCH & POLICY ANALYSIS

CHILD CARE & WORKFORCE POLICY OPTIONS: INSURANCE

ECONOMIC AFFAIRS INTERIM COMMITTEE
ERIN SULLIVAN – MARCH 2024

BACKGROUND AND PURPOSE

The Economic Affairs Interim Committee (EAIC) chose to study child care and the workforce during the 2023-2024 interim. After hearing testimony from stakeholders during the first half of the interim, the committee requested information and options regarding potential policy changes related to liability insurance for child care providers.

In an insurance survey conducted by Zero to Five Montana[1], child care providers indicated general liability insurance premiums rose from a mean of $1,397 reported in 2019 and $2,335 reported for 2022. Nearly half (41%) of survey respondents indicated they had been dropped by an insurance carrier at some point since 2019, with most of the providers being dropped because the carrier no longer covers child care in the state. Additional reasons for coverage drop included ratio issues and program or facility citations.

This paper outlines potential policy considerations concerning **insurance** the EAIC could introduce in a committee bill or bills for the upcoming 2025 legislative session. ***It is important to note*** that these are draft options developed by staff based on committee hearings and discussions to date.

CAPTIVE INSURANCE MODEL

An option discussed by the State Auditor's Office (SAO) at the January 2024 EAIC meeting was for child care providers to look into the captive insurance model, and provided a memo with additional information on the model at the March 2024 meeting.

The memo states that in order for the child care industry to utilize the captive insurance model, the industry will need to form an association. In addition to working with either the Commissioner of Securities and Insurance (CSI) or a consultant, the association likely will need assistance with funding prior to implementation.

A suggestion by the SAO at the January 2024 meeting was to look at HB332 from the 2023 session as guideline legislation for incentivizing a new child care association captive. HB332, also known as the "school trust bill" provides an incentive for school districts to come together to form a "district health insurance trust" in order to negotiate better terms from health care providers and reduce costs by being

[1] https://leg.mt.gov/content/Committees/Interim/2023-2024/Economic-Affairs/Meetings/January-2024/1.1.3-Insurance-Survey-Summary-Findings-14April23.pdf

self-insured. HB332 includes several stipulations in order to access the incentive, including a minimum number of participants, a cap on administrative costs, authorization from the CSI, and an expiration date to qualify for the incentive.

See Appendix A for a recap of HB332, including an infographic on the basic function of a self-funded insurance plan.

COMMITTEE CONSIDERATIONS FOR CAPTIVE INSURANCE MODEL

- Recommend the child care industry work with the SAO on a feasibility study for the captive insurance model.
- If the committee wishes to draft legislation to include a state incentive for funding, reference HB332 (2023) as guidance for incentive parameters to the child care industry to establish captive insurance.

STATE REINSURANCE POOL

Another idea discussed at the January 2024 EAIC meeting was a potential for the state to become the reinsurer, should child care providers form an association for liability insurance, similar to the Montana Reinsurance Association (MRA) for Health Insurance.

Reinsurance is insurance for insurance companies. It lets insurance companies transfer risk from one or more policies to a reinsurance company to mitigate some of the impact of potentially catastrophic losses, or high loss claims.

The SAO provided a memo with key characteristics on the MRA, including funding sources, mandatory membership, and use of funds. Of note, the MRA is funded through federal grants and health insurance premium assessments. The federal grant is accessible because the MRA reinsures health insurance.

Establishing a state administered reinsurance program for liability insurance for a child care association will require a funding source prior to implementation.

COMMITTEE CONSIDERATIONS FOR CAPTIVE INSURANCE MODEL

- Recommend the child care industry work with the SAO on a feasibility study for a state administered reinsurance program.
- If the committee wishes to draft legislation to include a state incentive for funding, the committee may consider collaborating with the CSI for guidance.

APPENDIX A: THE BASICS OF HB332 – INCENTIVIZING A SCHOOL DISTRICT HEALTH INSURANCE TRUST

Authored by Pad McCracken, Research Analyst, Education Interim Committee

BACKGROUND

K-12 employee health benefits have been a perennial topic of discussion and debate in the Montana Legislature for 20+ years. The debate has been fueled by two persistent problems:

- large variability in the health benefits offered by school districts and in the cost of providing those benefits; and
- increasing costs of providing health benefits taking up a larger share of district general fund budgets.

While House Bill No. 332 (Bedey; 2023) was not a committee bill, the 2021-2022 Education Interim Committee spent considerable time on this issue and compiled a good deal of information which is available on the committee webpage.

WHAT THE BILL DOES IN SIMPLE TERMS

HB 332 provides a significant incentive, $40 million, for school districts to band together in forming a "district health insurance trust" with the idea being that by acting together in a large trust rather than in isolation or in smaller trusts, districts, through the trust, will be able to negotiate better terms from health care providers and third-party administrators and reduce costs by being self-insured, rather than paying for insurance. The $40 million must be used by the trust "to stabilize health insurance costs through capitalization of an operating reserve for the district members of the trust."

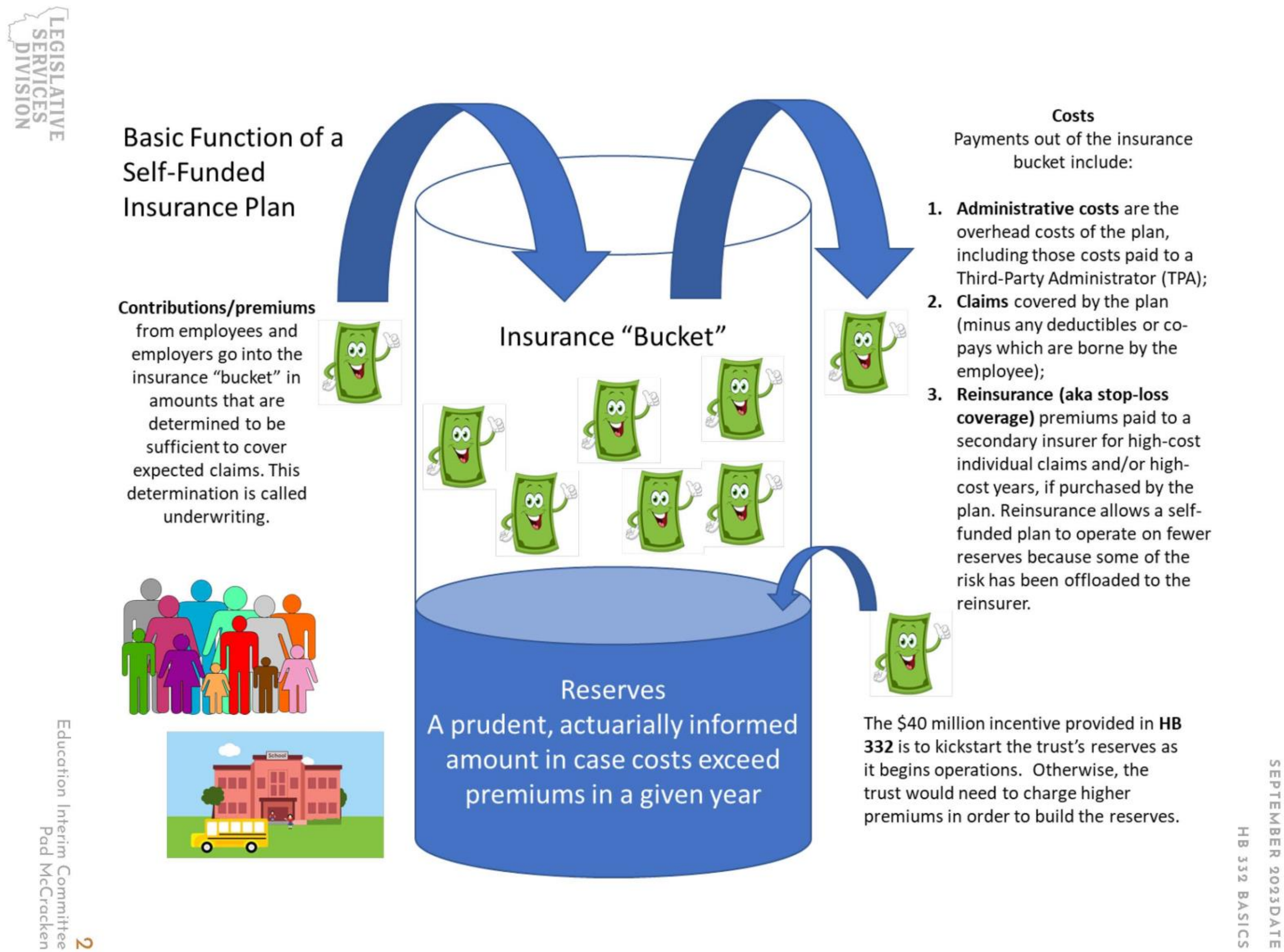
Only the first trust that applies and is qualified by the state auditor can receive the incentive. The bill lays out various conditions that a trust must meet to qualify and receive the incentive as well as conditions under which a district may withdraw from the trust. After withdrawing, a district may not rejoin for 5 years. There are also terms for the dissolution of the trust, both voluntary and mandatory for failing to maintain qualifications. These terms include the return of any remaining assets attributable to the $40 million incentive.

This $40 million is only "on the table" until **June 30, 2026**, at which point it will be transferred to the long-range building account of the state. It is up to school districts and the organizations and associations that support them to make this happen. The state auditor has oversight over the self-governing trust through qualification approval, rulemaking authority, serving on the governing board in an ex-officio capacity, reviewing annual financial reports, and the ability to dissolve the trust should it fail to comply with laws, rules, or solvency requirements.

To qualify for the $40 million incentive, a trust must meet multiple conditions including:

- serving at least 150 school districts with at least 12,000 employees who will participate in the trust; and
- limiting administrative costs to no more than 12% of total costs.

Only the first trust that applies and is qualified by the state auditor can receive the incentive.


LEGISLATIVE SERVICES DIVISION
Basic Function of a Self-Funded Insurance Plan
Contributions/premiums from employees and employers go into the insurance "bucket" in amounts that are determined to be sufficient to cover expected claims. This determination is called underwriting.
Insurance "Bucket"
Reserves
A prudent, actuarially informed amount in case costs exceed premiums in a given year
Costs
Payments out of the insurance bucket include:
1. **Administrative costs** are the overhead costs of the plan, including those costs paid to a Third-Party Administrator (TPA);
2. **Claims** covered by the plan (minus any deductibles or co-pays which are borne by the employee);
3. **Reinsurance (aka stop-loss coverage)** premiums paid to a secondary insurer for high-cost individual claims and/or high-cost years, if purchased by the plan. Reinsurance allows a self-funded plan to operate on fewer reserves because some of the risk has been offloaded to the reinsurer.
The $40 million incentive provided in **HB 332** is to kickstart the trust's reserves as it begins operations. Otherwise, the trust would need to charge higher premiums in order to build the reserves.
Education Interim Committee
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SEPTEMBER 2023DATE
HB 332 BASICS