

BILL ANALYSIS

H.B. 3320
By: Oliverson
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill author has informed the committee that over the past two years, Texas has faced a volatile property and casualty insurance market, with rising premiums placing an increasingly unsustainable financial burden on property owners of all types, and that religious institutions have been especially affected by the increasing costs of insuring their church facilities. In 2023, the Louisiana Legislature attempted to address this issue by passing legislation allowing religious institutions to create and participate in self-insurance risk pools. H.B. 3320 seeks to provide more affordable insurance alternatives for religious institutions in Texas by allowing churches, nonprofit religious organizations, and religious denominations to create and participate in a property and casualty self-insurance pool rather than obtaining coverage from traditional insurers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

ANALYSIS

H.B. 3320 amends the Insurance Code to set out procedures for the creation and operation of a property and casualty self-insurance pool for certain religious institutions. The bill establishes that such a pool is not an insurer and that pool coverage is not insurance for purposes of the Insurance Code. The bill further establishes that a pool is not subject to a provision of that code other than the bill's provisions, is not a partnership under state laws, and is not a member insurer of the Texas Property and Casualty Insurance Guaranty Association. The bill authorizes the commissioner of insurance to adopt rules necessary to implement the bill's provisions.

Creation of Pool

H.B. 3320 authorizes a religious institutions self-insurance pool to be created by two or more churches or nonprofit religious organizations or one or more religious denominations that enter into a pool creation agreement. The bill requires that agreement to be in the form of an indemnity agreement signed by each organizing party acknowledging and agreeing to the assumption of the obligations of the pool. The bill requires each organizing party that enters into a pool creation agreement to have a positive net worth, be financially solvent, and be capable of assuming the obligations of the pool.

H.B. 3320 defines the following terms for purposes of its provisions:

- "board" as the board of trustees of the pool;
- "church" as a nonprofit religious organization consisting of a group of religious believers;
- "fund" as a trust fund established for the pool under the bill's provisions;
- "member" as a church, nonprofit religious organization, or religious denomination entitled to pool coverage and obligated for pool liabilities under a pool coverage agreement;
- "nonprofit religious organization" as an active corporation or other entity organized under Section 501(c)(3), Internal Revenue Code of 1986, as a nonprofit organization defined as a church or religious house of worship, an organization formed for religious purposes, a nonprofit institution affiliated with a faith-based organization, or an integrated auxiliary organization of a church;
- "organizing party" as a church, nonprofit religious organization, or religious denomination that has entered into a pool creation agreement;
- "person" as an individual, corporation, trust, partnership, association, or any other legal entity;
- "pool" as the religious institutions self-insurance pool authorized by the bill;
- "pool coverage" as the self-insured coverage provided by the pool in accordance with the bill's provisions;
- "pool coverage agreement" as an indemnity agreement under which a church, nonprofit religious organization, or religious denomination is entitled to pool coverage in exchange for the payment of premiums to the pool and is obligated for pool liabilities;
- "pool creation agreement" as an agreement entered into under the bill's provisions for the creation of a pool; and
- "religious denomination" as a group of individual churches or houses of worship that are identified using the same terms and have a particular set of beliefs or spiritual or religious values.

H.B. 3320 requires the organizing parties to establish a trust fund to serve as the group self-insurance account for the members. The bill requires those parties, at the time they enter into the pool creation agreement, to select nine individuals to serve as the pool's temporary board of trustees, which is responsible for drafting a plan of operation for the pool. The bill authorizes that temporary board to do the following:

- solicit applications from prospective members to participate in the pool on the date the pool begins providing pool coverage;
- accept payment of premiums for the prospective pool coverage; and
- take any other action necessary to complete and submit an application for a certificate of authority under the bill's provisions.

H.B. 3320 requires the pool to be domiciled in Texas.

Certificate of Authority

H.B. 3320 prohibits the pool from providing pool coverage before the Texas Department of Insurance (TDI) issues a certificate of authority to the pool. The bill establishes that such a certificate is continuous until revoked or suspended by the commissioner or the board voluntarily surrenders the certificate in connection with the pool's dissolution. The bill requires the pool's temporary board to submit to TDI a written application, in the form and manner prescribed by the commissioner, for a certificate of authority.

H.B. 3320 requires an application for a certificate of authority to include the pool creation agreement, the plan of operation, and evidence of the financial strength and liquidity of the organizing parties to pay claims promptly and support the pool's financial ability to satisfy the pool's obligations. The bill requires that evidence to be in the form of the following:

- either:
 - financial statements, dated not later than one year before the date the temporary board submits the application and audited by an independent certified public accountant, showing a combined net worth of the organizing parties of at least \$1 million; or
 - financial documents, in the form and manner prescribed by the commissioner, sufficient to verify the combined net worth of the organizing parties is at least \$1 million;
- current financial documents of each prospective member that has applied to participate in the pool dated not later than one year before the date the board submits the application;
- schedules of all prospective members showing:
 - the ratio of current assets to current liabilities of all prospective members combined to be greater than one-to-one;
 - the working capital of all prospective members combined to be an amount establishing the financial strength and liquidity of the pool to pay claims promptly; and
 - the net worth of all prospective members combined to be at least \$1 million; and
- other financial information and documents as required by the commissioner.

H.B. 3320 requires the following items to be included with an application for a certificate of authority:

- security as required by the bill's provisions relating to initial financial requirements;
- copies of excess insurance or reinsurance that meets the requirements of the bill's provisions and the commissioner;
- a bond covering each third-party administrator as required by the bill;
- a certification from a designated depository attesting to the amount of money on hand in the fund;
- copies of pool bylaws and any trust agreement or other governance documents;
- an individual application, in the form and manner prescribed by the commissioner, of each prospective member applying to participate in the pool that includes a copy of that member's executed indemnity agreement;
- evidence of financial strength and liquidity of the prospective members on the date the application is submitted to satisfy the applicable bill requirements;
- proof that the pool will have the minimum annual earned premium required by the bill when the pool begins operation;
- the current annual report or financial statement of any casualty insurance company providing excess or reinsurance coverage for the pool, if the statement is not already on file with TDI;
- the name, address, and telephone number of each attorney representing the pool, each qualified actuary for the pool, and each certified public accountant who will be auditing the annual financial statements of the pool, as well as evidence of the appointment of each by the board;
- the domicile address in Texas where the pool's books and records are maintained and the state from which the pool's fund will be administered;
- proof of advance payment into the fund by each prospective member of not less than 25 percent of that member's first year estimated annually earned premiums;
- a feasibility study or other analysis prepared by a qualified actuary using actual loss history of the prospective members;
- pro forma financial statements projecting the first three years of operations of the pool based on a feasibility study or other analysis prepared by a qualified actuary that include a pro forma balance sheet, income statement, and statement of cash flow, each of which are prepared in accordance with generally accepted accounting principles; and
- a copy of the pool's premium billing policy indicating whether the premium payments to the pool are to be paid by members annually, monthly, quarterly, or any combination of those periods.

The bill requires the application to be sworn to and subscribed before a notary public.

H.B. 3320 requires the commissioner to approve an application for a certificate of authority if the application and the proposed pool satisfy the requirements of the bill's provisions relating to such certificates and rules adopted under the bill's provisions. The bill authorizes the commissioner to do the following:

- deny without review an application that does not meet those requirements;
- impose an application fee in an amount necessary to cover TDI's expenses in reviewing the application; and
- impose other fees in amounts reasonable and necessary to defray the costs of administering the bill's provisions.

Operation of Pool

H.B. 3320 establishes that the pool is governed by a board of trustees composed of nine members selected as provided by the plan of operation. The bill requires the initial regular board to be selected not later than the 15th day after the date the commissioner approves the temporary board's application for a certificate of authority and requires the members of the initial regular board to take office not later than the 30th day after the date that application is approved.

H.B. 3320 authorizes the board to administer the pool by employing an administrator or contracting with a third-party administrator. If the board employs an administrator, the bill requires the pool to purchase a bond, errors and omissions insurance, directors' and officers' liability insurance, or another security approved by the commissioner for the administration of the pool. The bill requires a third-party administrator who is contracted by the board and whose acts are not covered by the bond, such insurance, or other approved security and any person contracting either directly or indirectly with the pool for the purpose of providing claims adjusting, underwriting, safety engineering, loss control, marketing, investment advisory, or administrative services to the pool or the members, other than bookkeeping, auditing, or claims investigation services, to do the following:

- submit to TDI:
 - a safekeeping receipt or trust receipt from a bank or savings and loan association doing business in Texas indicating the deposit and pledge to secure the performance of the administrator's or person's obligations under the contract and the bill's provisions of either \$50,000 or bonds of the United States, the state, or any political subdivision of the state having a par value of \$50,000; or
 - a surety bond issued by a corporate surety authorized to engage in business in Texas of not less than \$50,000; and
- place all contractual terms, including fee arrangements, in a written agreement that constitutes the entire agreement between the parties and is signed by the administrator or person and the pool.

Pool Coverage

H.B. 3320 establishes that the pool's certificate of authority authorizes the pool to provide coverage to churches, nonprofit religious organizations, and religious denominations on a self-insured basis for damage to or loss of a structure or building. The bill authorizes the pool coverage to include any of the following additional coverage:

- premises liability coverage;
- contents coverage for furniture or equipment;
- wind and hail coverage;
- loss of use coverage; or
- medical payments coverage.

To the extent required by the bill's provisions, each member is jointly and severally liable for liabilities incurred by the pool for each fiscal year in which the member is entitled to pool coverage. The bill establishes that pool coverage is provided in the form of an indemnity

agreement entered into by the member under which the member is entitled to pool coverage in exchange for the payment of premiums to the pool and is obligated for those pool liabilities.

H.B. 3320 requires the board to set rates for pool coverage and requires those rates to be actuarially justified. The bill requires the board to file proposed rates with TDI and authorizes the board to use the rates beginning on the 90th day after the date of the filing, unless the commissioner disapproves the use of the rates within the 90-day period. The bill requires the board to prescribe a reasonable procedure for any member aggrieved by the rates to request in writing a review of the rating system for pool coverage and does the following with respect to such a request:

- requires the board to grant or deny the request in writing not later than the 30th day after the date the board receives the request;
- authorizes the party requesting a review, if the board rejects the request or fails to grant or reject the request within the 30-day period, to appeal to the commissioner for a hearing not later than the 30th day after the expiration of the 30-day period; and
- authorizes the commissioner, after the hearing, to affirm, modify, or reverse an action taken by the board with respect to rates.

The bill requires the pool, on request of the commissioner, to obtain a rate review conducted by a national independent actuarial firm, provided that the commissioner may not make more than two requests in any calendar year for such a rate review. The bill requires the firm to report its findings to the commissioner.

H.B. 3320 requires the board, in the plan of operation, to prescribe underwriting guidelines and procedures for evaluating risks and procedures for eligible persons to apply to become members. The bill requires the board to provide written notice to an applicant for pool membership that the pool is not a member insurer covered by the Texas Property and Casualty Insurance Guaranty Association.

Solicitation of Pool Membership

H.B. 3320 requires any person soliciting applications for pool membership to hold a general property and casualty agent license under applicable state law. However, the bill establishes that a pool employee or employee of a religious denomination or association of nonprofit religious organizations is not required to hold an agent's license if the solicitation of applications for pool membership is not the employee's primary duty.

H.B. 3320 exempts an insurance agent or other person involved in the soliciting or processing of applications for pool membership from liability for claims arising out of the insolvency of the pool or the inability of the pool to pay claims as they become due unless the claimant first exhausts all remedies available to the claimant against the members as provided by the bill's provisions.

H.B. 3320 establishes that an insurance agent, for purposes of soliciting, selling, or negotiating the renewal or sale of group self-insurance coverage, insurance products, or insurance services, has the exclusive use of expirations, records, or other written or electronic information directly related to an application for pool coverage submitted to the agent or to a pool coverage agreement arranged through the agent. The bill prohibits the pool from using the applicable information related to a pool coverage application to solicit, sell, or negotiate the renewal or sale of insurance coverage, insurance products, or insurance services to members, either directly or by providing the information to others, without the express written consent of an insurance agent. However, the bill authorizes the pool to do the following:

- use the applicable information related to a pool coverage application to review the application, to issue a pool coverage agreement, or for any other purpose necessary for arranging pool coverage through an insurance agent; and

- use the agent's applicable information for any other purpose that does not involve the soliciting, selling, or negotiating the renewal or sale of group self-insurance coverage, insurance products, or insurance services.

H.B. 3320 requires an insurance agent's claim for lost commissions to be resolved in accordance with dispute resolution terms in the applicable agent contract and requires the applicable parties, in the absence of any dispute resolution terms, to attempt to resolve the dispute through mediation. The bill authorizes the parties, if the claim is not resolved through mediation, to agree to submit the claim to binding arbitration and authorizes an insurance agent, in the absence of such an agreement, to bring an action against the pool for the claim.

H.B. 3320 authorizes the board or pool administrator and an insurance agent, in a written agreement separate from the agency contract, to mutually agree to terms different from the bill's provisions relating to solicitation of pool membership. The bill exempts the following from those bill provisions:

- a pool coverage agreement provided by the pool on request, individually, or through a pool administrator;
- an insurance agent contract for the insurance agent's exclusive representation of one pool member or prospective pool member or a group of affiliated members or prospective members, in which case the rights of the agent are determined by the terms of the contract;
- a default by an insurance agent for nonpayment of premiums under the insurance agent's contract with the pool; or
- a terminated insurance agent contract if the pool is required by law to continue coverage for the member, in which case the pool is required to continue to pay the insurance agent commission on the pool coverage agreements issued under that contract that the pool is required to renew during the 36-month period following the effective date of the termination, provided that the commission is paid at the pool's prevailing commission rates in effect on the date of renewal for that class or line of coverage in effect on the date of renewal for agents whose contracts are not terminated.

Records

H.B. 3320 requires the pool to do the following with respect to records, defined by the bill as books, records, documents, accounts, or vouchers:

- maintain and make available to TDI all pool records to allow the commissioner to determine that the pool's financial condition, affairs, and operations are in compliance with the bill's provisions;
- maintain in Texas the original or a copy, defined by the bill as a photograph or reproduction, of a record for the purpose of commissioner examination until the earlier of the date the commissioner approves disposal of the record or the later of:
 - the first day of the examination period following the examination period in which the record is examined by the commissioner; or
 - the fifth anniversary of the creation of the record; and
- permanently maintain an original or certified copy of a record in which a member agrees to or acknowledges the members' joint and several liability for liabilities incurred by the pool.

The bill establishes that the pool's records and any records of TDI associated with the pool are confidential and not subject to disclosure under state public information law, except as otherwise provided by the bill.

Financial Provisions

H.B. 3320 requires the commissioner, at times determined necessary for purposes of maintaining the pool's financial stability, to require two or more members to maintain a minimum combined net worth of \$1 million and a current assets to current liabilities ratio of at

least one-to-one. The bill authorizes the commissioner, after the pool has been operating for three years and has a total surplus of \$3 million, to waive any of those requirements.

H.B. 3320 requires the pool to maintain at least \$750,000 in earned premiums in the pool's first year of operation as documented in the pool's audited financial statement prepared in accordance with generally accepted accounting principles. The bill requires the board, during that first year of operation, to submit one of the following to TDI:

- a safekeeping receipt or trust receipt from a bank or savings and loan association doing business in Texas indicating that the board has deposited and pledged either \$100,000 or bonds of the United States, the state, or a political subdivision of the state having a par value of \$100,000; or
- a surety bond issued by a corporate surety authorized to engage in business in Texas in an amount of \$100,000 to secure the pool's obligations.

The bill also requires the board to submit such a receipt or surety bond to TDI for each year after the pool's first year of operation, but for these subsequent years the applicable amount is \$250,000 instead of \$100,000. Furthermore, the bill requires the pool, each year after its first year of operation, to maintain at least \$2 million in earned premiums as documented on the pool's audited financial statement prepared in accordance with generally accepted accounting principles.

H.B. 3320 requires the board, for purposes of maintaining the financial stability of the pool, to annually assess each member a reserve payment in an amount that is a percentage of the premium owed by the member for that year. The bill requires the board to do the following:

- obtain approval from the commissioner of the percentage amount to be paid by all members before assessing such a reserve payment;
- deposit all reserve payments into a separate reserve account; and
- maintain the account at all times while the pool is in operation.

The bill prohibits the board from withdrawing money from the account without commissioner approval.

H.B. 3320 requires the pool to maintain, on a fiscal year basis, a contract of specific excess insurance or reinsurance of not less than an amount that is actuarially sound and approved by the commissioner. The bill prohibits the maximum retention under the contract from exceeding amounts provided by the commissioner and requires the commissioner to approve an excess insurance or reinsurance contract before use by the pool. The bill establishes that the pool is considered an insurer solely for purposes of authorizing the purchase of reinsurance under these provisions. With respect to excess insurance and reinsurance, the bill does the following:

- authorizes the board to purchase excess insurance or reinsurance from a domestic or foreign company, subject to certain statutes relating to authorized reinsurance and a specified Financial Accounting Standards Board statement;
- requires a casualty insurer, in order to be eligible to write excess coverage for the pool, to have on file with TDI the insurer's current financial statement showing assets, including any surplus to policyholders, at least equal to the current commissioner requirements for admission of a new company to engage in business in Texas;
- authorizes the board to enter into a contract for excess insurance coverage with an active underwriter of Lloyd's of London with prior commissioner approval; and
- requires the board, in addition to satisfying other applicable requirements under these bill provisions, to purchase excess insurance or reinsurance only from a company having an eligible rating of at least "A-" by A.M. Best Company, Inc., "A-" by Fitch Ratings Ltd., "A" by Weiss Ratings, "A-" by Standard & Poor's Financial Services LLC, or "A3" by Moody's Investors Service, Inc.

H.B. 3320 requires the board to file with TDI financial statements and financial reports, including financial statements audited by an independent certified public accountant and actuarial reports, as may be required by the commissioner under rules adopted under the bill's provisions.

H.B. 3320 authorizes the board to do the following with respect to member refunds:

- declare as refundable to members any money exceeding the amount necessary to fulfill the pool's obligations;
- distribute the refund at the board's discretion, in accordance with the plan of operation, provided that:
 - the amount of the refund does not exceed the members' distributions payable and is recorded on the pool's balance sheet as indicated by the most recently completed audited financial statements of the pool; and
 - the board provides written notice of the refund to TDI not later than the 10th day before the date the board provides the refund.

H.B. 3320 sets out provisions relating to the investment of pool money. The bill restricts the board to investing pool money only in a security or other investment authorized by these provisions that is interest-bearing, interest-accruing, dividend-paying, or income-paying and that is not in default. The bill establishes that a pool investment is exclusively for the benefit of the pool and requires the board to deposit the investment's interest or income in the fund. The bill authorizes the board to invest pool money not needed for current obligations in the following:

- a deposit in a federally insured bank or savings and loan association that is insured by the FDIC or collateralized by direct obligations of the United States;
- bonds or securities not in default as to principal or interest that are obligations of the United States;
- pass-through mortgage-backed securities and collateralized mortgage obligations issued by the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal Housing Administration, provided that the collateralized mortgage obligations have a minimum financial strength of "A" by Moody's Investors Service, Inc., Standard & Poor's Financial Services LLC, or Fitch Ratings Ltd.;
- obligations of the State of Texas or a political subdivision of the state having a minimum financial strength of "A" by one of the specified rating agencies, provided that not more than 5 percent of the pool's assets are invested in any particular issue and the type of investment does not exceed 15 percent of the pool's assets in the aggregate;
- obligations of any state or a political subdivision of that state, subject to same conditions as obligations of the State of Texas or its political subdivisions;
- commercial mortgage-backed securities with purchases having a minimum financial strength of "Aaa" or "AAA," as applicable, from one of the specified rating agencies, provided that not more than 2 percent of the pool's assets are invested in one issue and this type of investment does not exceed 10 percent of the pool's assets in the aggregate;
- asset-backed securities with purchases having a minimum financial strength of "Aa" or "AA," as applicable, from one of the specified rating agencies, provided that no more than 5 percent of the pool's assets are invested in one issue and this type of investment does not exceed 10 percent of the pool's assets in the aggregate;
- repurchase agreements when the collateral for the agreement is a direct obligation of the United States, provided that the repurchase agreement is in writing, has a specific maturity date, adequately identifies each security to which the agreement applies, and states that in the event of the default by the party agreeing to repurchase the applicable securities at the term contained in the agreement, title to the securities passes immediately to the pool without recourse;
- corporate bonds having a minimum financial strength of "Baa" or "BBB," as applicable, by one of the specified rating agencies, provided that corporate bonds of any particular issue or issuer constitute not more than 5 percent of the pool's assets and not more than 50 percent of the pool's assets are invested in corporate bonds of all types, except as otherwise provided by the bill;

- mutual or trust fund institutions registered with the Securities and Exchange Commission that have underlying investments consisting solely of securities approved for investment as provided by the bill, provided that this investment does not exceed 50 percent of the pool's assets in the aggregate; and
- individual equities, provided that:
 - individual equities and any mutual funds or exchange-traded funds do not exceed 15 percent of the pool's assets;
 - the pool holds a minimum of 5 different issues in the equity sector to provide for diversification; no single issue constitutes more than five percent, at cost, of the pool's overall investment fund;
 - market capitalization for each issue is of at least \$1 billion;
 - each eligible issue pays a cash dividend; and
 - the equity holdings are restricted to high-quality readily marketable securities corporations that are domiciled in the United States and actively traded on the major U.S. exchanges or equities of foreign-domiciled corporations that trade American depositary receipts on such exchanges; and
- a mutual fund or exchange-traded fund, provided that the same general quality requirements described for individual equities are met, the applicable fund pays a dividend and consists of securities that have an average market capitalization of at least \$1 billion, and the aggregate total of the investment, plus any individual securities, does not exceed 15 percent of the pool's assets.

H.B. 3320 authorizes the board to invest in corporate bonds in excess of the 5 percent and 50 percent limitations up to an additional 10 percent of the pool's assets if the financial circumstances are acceptable to the commissioner, such as an increase in market value after initial purchase of a corporate bond, provided that the initial purchase of corporate bonds was within the applicable limitations and, in determining the financial condition of the pool, the commissioner does not include as assets of the pool those corporate bonds that exceed 50 percent of the pool's total assets.

H.B. 3320 prohibits the board from investing in rental assets, including the following:

- any item that is not actually owned by the pool;
- any item of which the ownership is subject to resolution, rescission, or revocation on the pool's insolvency, receivership, bankruptcy, statutory supervision, rehabilitation, or liquidation or on the occurrence of any other contingency;
- except for leases capitalized under generally accepted accounting principles, any item for which the pool pays a regular or periodic fee for the right to carry the item as an asset, whether the fee is characterized as a rental fee, a management fee, or a dividend not previously approved by the commissioner, or makes another periodic payment for that right;
- any asset purchased for investment by the pool on credit in which the interest rate paid by the pool on its credit instrument is greater than the interest rate or yield generated by the purchased asset;
- any asset on the pool's balance sheet subject to a mortgage, lien, privilege, preference, pledge, charge, or other encumbrance that is not accurately reflected in the liability section of the pool's balance sheet; and
- any asset received by the pool as a contribution to capital or surplus from any person that meets any of the criteria described by this list while in the hands of that contributing person or on or after the moment of the contribution to capital.

H.B. 3320 requires an authorized representative of the board to take the following actions if the pool has either three years of consecutive net losses on the pool's audited financial statements or two years of consecutive net losses on the pool's audited financial statements of more than the greater of \$500,000 or five percent of the premium of the latest audited financial statement:

- attend a meeting with TDI, the pool administrator, and any third-party administrator to discuss the financial condition of the pool and to advise TDI of the course of action the pool will take to obtain net incomes on subsequently audited financial statements;
- file with TDI a written plan signed by the board describing the actions the pool will take to generate net incomes on those statements; and
- obtain an actuarial rate analysis, if such an analysis was not performed for the previous fiscal year.

H.B. 3320 requires the board, if the pool becomes insolvent, defined by the bill as the condition in which the pool has liabilities greater than the pool's assets as determined in accordance with generally accepted accounting principles, to file with TDI, not later than the 60th day after the date the board becomes aware of the insolvency, a written plan to resolve the insolvency signed by the board. In determining whether the pool is insolvent, intangible property such as patents, trade names, or goodwill may not be considered to be assets of the pool. The bill requires the insolvency plan to provide in detail the means by which the board intends to eliminate the insolvency, including any assessment of the members the board determines is necessary, the timetable for implementing the plan, and the reporting that will be made to TDI regarding the plan progress, and to include any other information required by the commissioner. The bill requires the commissioner to do the following:

- review the insolvency plan and notify the board of the plan's approval or disapproval not later than the 30th day after the date TDI receives the plan; and
- provide written notice to the board of a determination that the plan is disapproved or a determination that the pool is not implementing an approved plan in accordance with the plan's terms.

H.B. 3320 authorizes the commissioner, in addition to any other powers, to take any action against the pool that the commissioner could take against an insurer under statutory provisions relating to supervision and conservatorship or the Insurer Receivership Act if the commissioner determines that the pool is insolvent, operating in a hazardous financial condition, or otherwise operating in violation of the bill's provisions. For purposes of this authorization, the bill defines "hazardous financial condition" as a condition in which, based on the pool's present or reasonably anticipated financial condition, the pool, although not yet financially impaired or insolvent, is unlikely to be able to meet the pool's obligations to members with respect to known claims and reasonably anticipated claims or pay other obligations in the normal course of business.

Commissioner Examination

H.B. 3320 requires the commissioner to conduct an examination of the pool at least once every five years and at other times as the commissioner considers necessary. The bill requires the examination to be conducted in the same manner as an examination of an insurer under applicable state law. The bill establishes that the commissioner, in conducting an examination of the pool, has the same powers and duties with respect to the pool, and with respect to other persons in relation to the pool's affairs and condition, that the commissioner has with respect to an insurer or other persons with respect to an insurer's affairs and condition.

Dissolution of Pool

H.B. 3320 requires the board, if the members of the pool elect to dissolve the pool, to apply to the commissioner in the form and manner prescribed by the commissioner for the authority to dissolve. The bill requires the commissioner to approve or disapprove the application not later than the 60th day after the date the commissioner receives the application. The commissioner must approve the application if either of the following circumstances apply:

- the pool has no outstanding liabilities, including incurred but not reported liabilities; or
- the pool is covered by an irrevocable commitment from an authorized insurer that provides for payment of all outstanding liabilities and related services, including

payment of claims, preparation of reports, and administration of transactions associated with the period during which the pool provided pool coverage.

On the pool's dissolution and after payment of all outstanding liabilities and indebtedness, the pool assets must be distributed to the members under a distribution plan submitted by the board to TDI and approved by the commissioner. The bill prohibits dissolution of the pool without authorization and establishes that the dissolution of the pool in violation of that prohibition does not absolve or release the pool, a member, or any individual or entity that has executed an indemnity agreement in connection with the pool from obligations incurred or entered into before the dissolution.

Enforcement

H.B. 3320 authorizes a consumer to file a complaint with TDI to report a suspected violation of the bill's provisions or the failure of the pool to meet its obligations under a pool coverage agreement or the plan of operation. The bill authorizes the commissioner, after investigating a complaint regarding the pool, to order the board to take a corrective action the commissioner considers necessary instead of taking another enforcement action authorized by the bill.

H.B. 3320 authorizes the commissioner to order the board to submit a corrective action plan to remediate any noncompliance or financial issues affecting the pool. The bill requires the board to submit the completed corrective action plan to the commissioner for approval and include standards, time frames, and other parameters acceptable to the commissioner. The bill authorizes that plan to include the following:

- mandatory training;
- on-site or off-site monitoring and supervision of the activities of the pool for a specific period of time to determine progress regarding correction of deficiencies;
- the submission of written progress reports;
- the institution of measures to conserve or generate additional funding for the pool; or
- the imposition of an administrative penalty under the bill's provisions for any future misconduct of the kind that contributed to the need for the imposition of the plan.

Failure by the pool to comply with the corrective action plan may result in the imposition of an administrative penalty under the bill's provisions, suspension or revocation of the pool's certificate of authority, or placement of the pool into supervision.

H.B. 3320 authorizes the commissioner, if the commissioner determines the pool has violated the bill's provisions, a commissioner rule, or any order or directive issued by the commissioner, to order the pool to cease and desist from the conduct constituting the violation or suspend or revoke the pool's certificate of authority. Such a cease and desist order may include a prohibition on issuing or renewing pool coverage.

H.B. 3320 authorizes the commissioner, on determining that the pool or any trustee, member, officer, administrator, or employee of the pool has violated the bill's provisions, any other applicable law relating to the pool, a commissioner rule, or any order or directive issued by the commissioner, to impose an administrative penalty capped at \$2,000 for each violation, except that for a subsequent violation the cap is \$4,000.

Transition Provision

H.B. 3320 prohibits a board of trustees from applying for a certificate of authority for a pool before January 1, 2026.

EFFECTIVE DATE

September 1, 2025.