

**2785.1400 DEFICIT AND ASSESSMENTS.**

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

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

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

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

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

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

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

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

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

quarters of the current fund year, and includes the following periods depending on the type of pool:

- (1) for employee health benefit pools, the most recent three complete fund years;
- (2) for workers' compensation pools, the most recent ten complete fund years; and
- (3) for all other pools, the most recent five complete fund years.

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

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

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

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

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

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

**History:** *10 SR 274*

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