

Senate Bill 904

Sponsored by Senator TAYLOR (at the request of Portland Public Schools)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would let school districts apply to be exempt from the law that requires self-insured employers to submit proof that they will be able pay workers' comp claims. (Flesch Readability Score: 60.7).

Includes school districts among the self-insured employers that may apply for exemption from the rules requiring such employers to demonstrate financial viability and provide security to the Director of the Department of Consumer and Business Services.

A BILL FOR AN ACT

1
2 Relating to self-insured employers; amending ORS 656.407 and 656.430.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 656.407 is amended to read:

5 656.407. (1) An employer shall establish proof with the Director of the Department of Consumer
6 and Business Services that the employer is qualified either:

7 (a) As a carrier-insured employer by causing proof of coverage provided by an insurer to be filed
8 with the director; or

9 (b) As a self-insured employer by establishing proof that the employer has:

10 (A) An adequate staff qualified to process claims promptly; and

11 (B) [*has*] The financial ability to make certain the prompt payment of all compensation and
12 other payments that may become due to the director under this chapter.

13 (2) Except as provided in subsection [(3)] (4) of this section, a self-insured employer shall es-
14 tablish proof of financial ability **required under subsection (1)(b) of this section** by:

15 (a) Demonstrating acceptable financial viability based on information required by the director
16 by rule; and

17 (b) Providing security that the director determines acceptable by rule.

18 (3)(a) [*The*] Security **provided under subsection (2)(b) of this section** must be in an amount
19 reasonably sufficient to [*insure*] **ensure** payment of compensation and other payments that may be-
20 come due to the director but not less than the employer's normal expected annual claim liabilities
21 and in no event less than \$100,000.

22 (b) In arriving at the amount of security required under this subsection, the director may take
23 into consideration the financial ability of the employer to pay compensation and other payments and
24 probable continuity of operation.

25 (c) The security shall be held by the director to secure the payment of compensation for injuries
26 to subject workers of the employer and to secure other payments that may become due from the
27 employer to the director under this chapter.

28 (d) Moneys received as security under this subsection shall be deposited with the State Treas-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 urer in an account separate and distinct from the General Fund. Interest earned by the account
2 shall be credited to the account.

3 (e) The amount of security may be increased or decreased from time to time by the director.

4 [(3)(a)] (4)(a) A city, county, **school district** or [a] qualified self-insured employer group that
5 wishes to be exempt from subsection (2) of this section may make written application [therefor] **for**
6 **the exemption** to the director.

7 (b) The application shall include:

8 (A) A copy of the most recent annual audit of the city, county, **school district** or qualified
9 self-insured employer group filed with the Secretary of State under ORS 297.405 to 297.740[.];

10 (B) Information regarding the establishment of a loss reserve account for the payment of com-
11 pensation to injured workers; and

12 (C) Such other information as the director may require.

13 (c) The director shall approve the application and the city, county, **school district** or qualified
14 self-insured employer group shall be exempt from subsection (2) of this section if the director finds
15 that:

16 (A) The city, county, **school district** or qualified self-insured employer group has been self-
17 insured in compliance with subsection (2) of this section for more than three consecutive years prior
18 to making the application referred to in this subsection.

19 (B) The city, county, **school district** or qualified self-insured employer group has in effect a loss
20 reserve account:

21 (i) That is actuarially sound and that is adequately funded as determined by an annual audit
22 under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the di-
23 rector pursuant to this chapter. A copy of the annual audit shall be filed with the director. Upon
24 a finding that there is probable cause to believe that the loss reserve account is not actuarially
25 sound, the director may require a city, county, **school district** or qualified self-insured employer
26 group to obtain an independent actuarial audit of the loss reserve account. The requirements of this
27 subsection are in addition to and not in lieu of any other audit or reporting requirement otherwise
28 prescribed by or pursuant to law.

29 (ii) That is dedicated to and may be expended only for the payment of compensation and
30 amounts due the director by the city, county, **school district** or qualified self-insured employer
31 group under this chapter.

32 [(b)] (d) The director shall have the first lien and priority right to the full amount of the loss
33 reserve account required to pay the present discounted value of all present and future claims under
34 this chapter.

35 [(c)] (e)(A) The city, county, **school district** or qualified self-insured employer group shall notify
36 the director no later than 60 days prior to any action to discontinue the loss reserve account.

37 (B) The city, county, **school district** or qualified self-insured employer group shall advise the
38 director of [the] **its** plans [of the city, county or qualified self-insured employer group] to submit the
39 security [deposits required in subsection (2)] **required under subsection (2)(b)** of this section, or
40 obtain coverage as a carrier-insured employer prior to the date the loss reserve account ceases to
41 exist.

42 (C) If the city, county, **school district** or qualified self-insured employer group elects to dis-
43 continue self-insurance, it shall submit such security as the director may require to [insure] **ensure**
44 payment of all compensation and amounts due the director for the period the city, county, **school**
45 **district** or qualified self-insured employer group was self-insured.

1 [(d)] (f) In order to requalify as a self-insured employer, the city, county, **school district** or
 2 qualified self-insured employer group must deposit **the security required under subsection (2)(b)**
 3 **of this section** prior to discontinuance of the loss reserve account [*such security as is required by*
 4 *the director pursuant to subsection (2) of this section*].

5 [(e)] (g) Notwithstanding ORS 656.440, if [*prior to the date of discontinuance of the loss reserve*
 6 *account*] the director has not received the security [*deposits required in subsection (2)*] **required**
 7 **under subsection (2)(b)** of this section **prior to the date of discontinuance of the loss reserve**
 8 **account**, the certificate of self-insurance of the city, county, **school district** or qualified self-insured
 9 employer group is automatically revoked as of that date.

10 [(4)] (5) As used in this section[,]:

11 (a) “Qualified self-insured employer group” means a self-insured employer group that is a mu-
 12 nicipal corporation or a public corporation, as those terms are defined in ORS 297.405.

13 (b) “School district” has the meaning given that term in ORS 255.005.

14 **SECTION 2.** ORS 656.430 is amended to read:

15 656.430. (1) Upon determining that an employer has qualified as a self-insured employer under
 16 ORS 656.407, the Director of the Department of Consumer and Business Services shall issue a cer-
 17 tificate to that effect to the employer.

18 (2) Coverage of a self-insured employer is effective on the date of certification unless a later
 19 date is specified in the certificate.

20 (3) Two or more entities may not be included in the certification of one employer unless in each
 21 entity the same person, or group of persons, or corporation owns a majority interest. If an entity
 22 owns a majority interest in another entity which in turn owns the majority interest in another en-
 23 tity, all entities so related may be combined regardless of the number of entities in succession. If
 24 more than one entity is included in the certification of one employer, each entity included is jointly
 25 and severally liable for any compensation and other amounts due the Department of Consumer and
 26 Business Services under this chapter by any entity included in the certification.

27 (4) In the term “majority interest,” as used in this section, “majority” means more than 50 per-
 28 cent.

29 (5) If an entity other than a partnership:

30 (a) Has issued voting stock, “majority interest” means a majority of the issued voting stock;

31 (b) Has not issued voting stock, “majority interest” means a majority of the members; or

32 (c) Has not issued voting stock and has no members, “majority interest” means a majority of the
 33 board of directors or comparable governing body.

34 (6) If the entity is a partnership, majority interest must be determined in accordance with the
 35 participation of each general partner in the profits of the partnership.

36 (7)(a) Notwithstanding any other provision of this section, the director may certify five or more
 37 subject employers as a self-insured employer group, which is an employer for purposes of this
 38 chapter, if:

39 (A) The director finds that the employers as a group meet the requirements of ORS 656.407
 40 (1)(b), [*and*] (2) **and (3)**;

41 (B) The director determines that the employers as a group meet the insurance coverage re-
 42 tention and combined net worth requirements adopted by the director by rule;

43 (C) The director finds that the grouping is likely to improve accident prevention and claims
 44 handling for the employer;

45 (D) Each employer executes and files with the designated entity a written agreement, in such

1 form as the director may prescribe, in which:

2 (i) The employer agrees to be jointly and severally liable for the payment of any compensation
3 and other amounts due to the Department of Consumer and Business Services under this chapter
4 incurred by a member of the group; or

5 (ii) The employer, if a city, county, special district described and listed in ORS 198.010 or
6 198.180, translator district formed under ORS 354.605 to 354.715, weed control district organized
7 under ORS 569.350 to 569.445, intergovernmental agency created under ORS 225.050, school district
8 as defined in ORS 255.005 [(9)], public housing authority created under ORS chapter 456 or regional
9 council of governments created under ORS chapter 190, agrees to be individually liable for the
10 payment of any compensation and other amounts due to the department under this chapter incurred
11 by the employer during the period of group self-insurance;

12 (E) The director finds that the employer group is organized as a corporation or cooperative
13 pursuant to ORS chapter 60, 62 or 65, is an intergovernmental entity created under ORS 190.003 to
14 190.130 or is a self-insurance program under ORS 30.282 (3), and the bylaws of the employer group
15 require the employer group to obtain fidelity bonds;

16 (F) The director finds that the employer group has designated an entity responsible for:

17 (i) Centralized claims processing in accordance with paragraph (b) of this subsection; and

18 (ii) Payroll records, safety requirements, recording and submitting assessments and contributions
19 and making such other reports as the director may require; and

20 (G) The employer has presented a method approved by the director to notify the department of:

21 (i) The commencement or termination of membership by employers in the group, and the effect
22 thereof on the net worth of the employers in the group; and

23 (ii) Whether an employer who terminates membership in the group continues to be a subject
24 employer; and

25 (b) Except for employer groups composed of cities, counties, special districts created under ORS
26 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS
27 255.005, public housing authorities created under ORS chapter 456 and regional councils of govern-
28 ments created under ORS chapter 190, a group administrator may not be a group member or a
29 member of the board of the group.

30 (8) A self-insured employer must have excess insurance coverage appropriate for the employer's
31 potential liability under this chapter with an insurer authorized to do business in this state. A self-
32 insured employer certified prior to November 1, 1981, must have excess insurance coverage appro-
33 priate for the employer's potential liability under this chapter either with an insurer authorized to
34 do business in this state or with any other insurer from whom such insurance can be obtained pur-
35 suant to ORS 744.305 to 744.405 (1985 Replacement Part). Evidence of such coverage must be sub-
36 mitted at the time application is made for self-insured certification in the form of an insurance
37 binder providing the appropriate coverage effective the date of certification. The policy providing
38 such coverage must be filed with the director not later than 30 days after the date the coverage is
39 effective. Any changes in the insurer or the coverage must be filed with the department not later
40 than 30 days after the effective date of the change. With respect to such coverage:

41 (a) The policy must include a provision, approved by the director, for reimbursement to the de-
42 partment of all expenses paid by the department on behalf of the employer pursuant to ORS 656.614
43 (1) and 656.443 in the same manner as if the department were the insured employer, subject to the
44 policy limitations on amounts and limits of liability to the insured employer; and

45 (b) The period of coverage must be continuous and remain in effect until the certification is

1 revoked or canceled.

2 (9) Notwithstanding ORS 656.440, the director may revoke the certification of any self-insured
3 employer after giving 30 days' written notice if the employer:

4 (a) Fails to comply with subsection (8) of this section;

5 (b) In the case of an employer described in subsection (7) of this section, fails to comply with
6 that subsection; or

7 (c) Fails to comply with rules adopted by the director as required by subsection (11) of this
8 section.

9 (10) A self-insured employer must have an occupational safety and health loss control program
10 as required by ORS 654.097.

11 (11) The director, by rule shall:

12 (a) Prescribe methods for determining and approving net worth.

13 (b) Prescribe the types and approve the retention and limitation levels of excess insurance pol-
14 icies.

15 (c) Establish reporting requirements.

16 (d) Prescribe information to be submitted in applications for self-insured employer certifications.

17 (e) Prescribe the form and manner of reporting commencement or termination in a self-insured
18 employer group.

19 (f) Prescribe the form, amount and manner for establishing and operating a common claims fund.

20 (g) Prescribe such other requirements as the director considers necessary so that employers
21 certified as self-insured employers will meet the financial responsibilities under this chapter.

22 (12) For the purpose of certification as a self-insured employer group, cities, counties, special
23 districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school
24 districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 and
25 regional councils of governments created under ORS chapter 190 shall be considered by the director
26 to be of the same industry.

27 (13) Notwithstanding subsection (8) of this section, a public utility with assets of more than \$500
28 million may obtain excess insurance coverage from an eligible surplus lines insurer. As used in this
29 subsection, "public utility" has the meaning given that term in ORS 757.005.

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