



General Assembly

February Session, 2020

**Raised Bill No. 5433**

LCO No. 2275



Referred to Committee on EDUCATION

Introduced by:  
(ED)

***AN ACT CONCERNING THE CREATION OF A SPECIAL EDUCATION  
EXCESS COST COOPERATIVE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) A captive insurance  
2 company shall be established by the incorporators described in this  
3 subsection, as a not-for-profit entity, in accordance with the provisions  
4 of sections 38a-91aa to 38a-91tt, inclusive, of the general statutes for the  
5 purpose of providing reimbursement payments to local and regional  
6 boards of education pursuant to section 10-76g of the general statutes,  
7 as amended by this act. The incorporators of such captive insurance  
8 company, shall be (1) the Commissioner of Education, or the  
9 commissioner's designee, (2) the Secretary of the Office of Policy and  
10 Management, or the secretary's designee, (3) one appointed by the  
11 speaker of the House of Representatives, (4) one appointed by the  
12 minority leader of the House of Representatives, (5) one appointed by  
13 the president pro tempore of the Senate, and (6) one appointed by the  
14 minority leader of the Senate. The appointments described in  
15 subdivisions (3) to (6), inclusive, of this subsection shall be made on or  
16 before July 1, 2020. If any said appointment has not been made by

17 August 1, 2020, the Governor shall make such appointment in order to  
18 fulfill the obligations of this section.

19 (b) In addition to any other requirements imposed by law applicable  
20 to captive insurance companies, the captive insurance company  
21 established pursuant to this section shall:

22 (1) Establish a board of directors who shall serve in a volunteer  
23 capacity. The board shall consist of seventeen members: (A) The  
24 Commissioner of Education, or the commissioner's designee; (B) the  
25 Secretary of the Office of Policy and Management, or the secretary's  
26 designee; (C) one representative designated from each municipal  
27 member group, organized and established pursuant to section 3 of this  
28 act; (D) two representatives from the Connecticut Conference of  
29 Municipalities, designated by the conference; (E) two representatives  
30 from the Connecticut Council of Small Towns, designated by the  
31 council; (F) one representative from Special Education Equity for Kids  
32 of Connecticut, designated by the organization; (G) one representative  
33 from the Connecticut Association of Public School Superintendents,  
34 designated by the association; and (H) three members designated by the  
35 incorporators described in subsection (a) of this section, one of whom  
36 shall have expertise on captive insurance, one of whom shall have  
37 expertise in claims handling and financial matters, and one of whom  
38 shall be an attorney with experience in matters relating to the  
39 Individuals with Disabilities Education Act, 20 USC 1400 et seq., as  
40 amended from time to time. Any vacancy on the board shall be filled by  
41 the designating authority;

42 (2) Develop, in coordination with the Department of Education, a  
43 process for reimbursement under section 10-76g of the general statutes,  
44 as amended by this act, to be used for the fiscal year ending June 30,  
45 2022, and each fiscal year thereafter, in which local and regional boards  
46 of education submit requests for reimbursement to the Department of  
47 Education and the department reviews such requests and directs the  
48 captive insurance company to make payments on such requests;

49 (3) For the fiscal year ending June 30, 2022, and each fiscal year  
50 thereafter, provide reimbursement pursuant to section 10-76g of the  
51 general statutes, as amended by this act, to local and regional boards of  
52 education for the total amount of the reasonable costs of special  
53 education instruction, as defined in the regulations of the State Board of  
54 Education, that is in excess of four and one-half times the net current  
55 expenditures per resident student, as defined in section 10-262f of the  
56 general statutes, of such board of education; and

57 (4) Develop a method for calculating the community contribution and  
58 establish a community contribution payment and cost reimbursement  
59 schedule, in accordance with the provisions of section 2 of this act.

60 (c) Except as provided in subsection (d) of this section, such captive  
61 insurance company shall not be considered a state agency for purposes  
62 of any provision of the general statutes, and shall not be considered to  
63 perform a governmental function for purposes of chapter 14 of the  
64 general statutes. Such captive insurance company may, subject to the  
65 provisions of this section, do all things necessary and desirable in its  
66 discretion to accomplish its purposes, including hiring employees and  
67 contracting for administrative or operational services, and entering into  
68 agreements. Not more than one per cent of all moneys allocated or made  
69 available to the captive insurance company in any calendar year shall  
70 be used for administrative or operational costs.

71 (d) Employees and agents of the captive insurance company shall not  
72 be deemed state employees, except that employees and directors shall  
73 be subject to the provisions of sections 1-84, 1-84a, 1-84b, 1-85 and 1-86  
74 of the general statutes. Any agent, consultant or contractor of the captive  
75 insurance company shall be subject to the provisions of sections 1-86e  
76 and 1-101nn of the general statutes. The Office of State Ethics shall have  
77 the authority to enforce the provisions of this subsection.

78 (e) Notwithstanding sections 38a-11 and 38a-91bb of the general  
79 statutes, the captive insurance company shall not be required to pay a  
80 license fee for the first year of licensure or a renewal fee for any year

81 thereafter, as set forth in said sections.

82 (f) In addition to any report required to be filed by not-for-profit  
83 entities generally under regulations of the Internal Revenue Service, the  
84 captive insurance company shall submit annual reports to the joint  
85 standing committees of the General Assembly having cognizance of  
86 matters relating to education and appropriations on its operation and  
87 financial condition. Such annual reports shall include, but need not be  
88 limited to, information concerning: (1) Moneys allocated or made  
89 available to it pursuant to this section, (2) reimbursement payments  
90 provided to each local and regional board of education pursuant to this  
91 section, (3) administrative and operational expenditures, and (4) the  
92 average time to process reimbursement payments.

93 (g) The joint standing committees of the General Assembly having  
94 cognizance of matters relating to education and appropriations shall,  
95 not less than annually, hold a joint public hearing on the operation and  
96 financial condition of the captive insurance company.

97 (h) Reimbursement determinations made by the Department of  
98 Education and payments made by the captive insurance company  
99 pursuant to this section shall be made in writing and provided to the  
100 local or regional board of education and shall include the information  
101 relied upon and the basis for such determination. A local or regional  
102 board of education may request a review of any determination by the  
103 captive insurance company relating to such reimbursement not later  
104 than thirty days after the decision. A final decision on such a request for  
105 review shall be made in writing and provided to the local or regional  
106 board of education not later than thirty days after receipt of such board's  
107 request, unless an extension is agreed to by such board. The final  
108 decision shall be subject to approval by the board of directors. There  
109 shall be no right to appeal such final decision.

110 (i) No member of the board of directors or any employee or agent of  
111 the captive insurance company shall (1) participate in, or otherwise  
112 contribute to, a planning and placement team meeting for any child

113 receiving special education or related services, or (2) comment on, or  
114 otherwise influence, the recommendations or decisions relating to the  
115 development or modification of an individualized education program  
116 of a child receiving special education or related services.

117 (j) Not later than July 1, 2022, and annually thereafter, the captive  
118 insurance company shall submit an annual report to the joint standing  
119 committees of the General Assembly having cognizance of matters  
120 relating to education and appropriations, in accordance with the  
121 provisions of section 11-4a of the general statutes. The annual report  
122 shall include, but need not be limited to, (1) trends in costs relating to  
123 the provision of special education and the outplacement of students  
124 with private providers of special education services, as defined in  
125 section 10-91g of the general statutes, (2) the total amount of money  
126 reimbursed by the captive insurance company pursuant to section 10-  
127 76g of the general statutes, as amended by this act, for the previous fiscal  
128 year, (3) the total number of students who received special education  
129 and related services for which reimbursement was sought under section  
130 10-76g of the general statutes, as amended by this act, during the  
131 previous fiscal year, and (4) a list of the providers of special education  
132 and related services and the amount charged by such providers for such  
133 services during the previous fiscal year.

134 (k) The captive insurance company shall continue until its existence  
135 is terminated by law. Upon the termination of the existence of the  
136 company, all its rights and properties shall pass to and be vested in the  
137 state of Connecticut.

138 Sec. 2. (NEW) (*Effective from passage*) (a) For the fiscal year ending June  
139 30, 2022, and each fiscal year thereafter, the board of directors of the  
140 captive insurance company, established pursuant to section 1 of this act,  
141 shall annually calculate, on or before December first, a community  
142 contribution payment amount for each town for the next fiscal year. In  
143 calculating such community contribution, the board may (1) consider  
144 (A) the number of resident students, as defined in section 10-262f of the  
145 general statutes, (B) the number of students requiring special education

146 and related services, and (C) previous special education expenses,  
147 including requests for reimbursement pursuant to section 10-76g of the  
148 general statutes, as amended by this act, and (2) include an equity  
149 adjustment based on such town's ability to pay. The community  
150 contribution for any town shall not exceed the total special education  
151 excess cost of expenses incurred by the local or regional board of  
152 education for such town.

153 (b) For the fiscal year ending June 30, 2022, and each fiscal year  
154 thereafter, each town shall annually make a community contribution  
155 payment to the captive insurance company. If a town does not make  
156 such annual community contribution to the captive insurance company  
157 required under this subsection, then the board of education for such  
158 town shall not receive reimbursement pursuant to section 10-76g of the  
159 general statutes, as amended by this act, for such fiscal year.

160 Sec. 3. (NEW) (*Effective from passage*) (a) The incorporators of the  
161 captive insurance company, described in subsection (a) of section 1 of  
162 this act, shall establish eight municipal member groups that are based  
163 on total population and median household income.

164 (b) Each municipal member group shall elect a representative to serve  
165 as a member of the board of directors of the captive insurance company,  
166 pursuant to subdivision (1) of subsection (b) of section 1 of this act. Such  
167 representative may include, but need not be limited to, a superintendent  
168 of schools, the chief financial officer or chief operating officer of a local  
169 or regional board of education, or a school business administrator.

170 Sec. 4. (NEW) (*Effective from passage*) Not later than October 1, 2020,  
171 the Department of Education shall enter into an agreement with the  
172 captive insurance company, established pursuant to section 1 of this act,  
173 concerning the sharing of data and information relating to students and  
174 the provision of special education to such students, provided such  
175 agreement shall include a provision that requires the captive insurance  
176 company to comply with the Family Educational Rights and Privacy Act  
177 of 1974, 20 USC 1232g, as amended from time to time.

178       Sec. 5. Section 10-76g of the 2020 supplement to the general statutes  
179 is repealed and the following is substituted in lieu thereof (*Effective July*  
180 *1, 2021*):

181       (a) (1) For the fiscal year ending June 30, 1984, and each fiscal year  
182 thereafter, in any case in which special education is being provided at a  
183 private residential institution, including the residential components of  
184 regional educational service centers, to a child for whom no local or  
185 regional board of education can be found responsible under subsection  
186 (b) of section 10-76d, the Department of Children and Families shall pay  
187 the costs of special education to such institution pursuant to its authority  
188 under sections 17a-1 to 17a-26, inclusive, 17a-28 to 17a-49, inclusive, 17a-  
189 52 and 17b-251. (2) For the fiscal year ending June 30, 1993, and each  
190 fiscal year thereafter, any local or regional board of education which  
191 provides special education and related services for any child (A) who is  
192 placed by a public agency, including, but not limited to, offices of a  
193 government of a federally recognized Native American tribe, in a  
194 private residential facility or who is placed in a facility or institution  
195 operated by the Department of Children and Families and who receives  
196 such special education at a program operated by a regional education  
197 service center or program operated by a local or regional board of  
198 education, and (B) for whom no local or regional board of education can  
199 be found responsible under subsection (b) of section 10-76d, shall be  
200 eligible to receive one hundred per cent of the reasonable costs of special  
201 education for such child as defined in the regulations of the State Board  
202 of Education. Any such board eligible for payment shall file with the  
203 Department of Education, in such manner as prescribed by the  
204 Commissioner of Education, annually, on or before December first a  
205 statement of the cost of providing special education for such child,  
206 provided a board of education may submit, not later than March first,  
207 claims for additional children or costs not included in the December  
208 filing. Payment by the state for such costs shall be made to the local or  
209 regional board of education as follows: Seventy-five per cent of the cost  
210 in February and the balance in May.

211       (b) Any local or regional board of education which provides special

212 education pursuant to the provisions of sections 10-76a to 10-76g,  
213 inclusive, for any exceptional child described in subparagraph (A) of  
214 subdivision (5) of section 10-76a, under its jurisdiction, excluding (1)  
215 children placed by a state agency for whom a board of education  
216 receives payment pursuant to the provisions of subdivision (2) of  
217 subsection (e) of section 10-76d, and (2) children who require special  
218 education, who reside on state-owned or leased property, and who are  
219 not the educational responsibility of the unified school districts  
220 established pursuant to sections 17a-37 and 18-99a, shall be financially  
221 responsible for the reasonable costs of special education instruction, as  
222 defined in the regulations of the State Board of Education, in an amount  
223 equal to [(A) for any fiscal year commencing prior to July 1, 2005, five  
224 times the average per pupil educational costs of such board of education  
225 for the prior fiscal year, determined in accordance with the provisions  
226 of subsection (a) of section 10-76f, and (B) for the fiscal year commencing  
227 July 1, 2005, and each fiscal year thereafter, four and one-half times such  
228 average per pupil educational costs] four and one-half times the net  
229 current expenditures per resident student, as defined in section 10-262f,  
230 of such board of education. The State Board of Education shall [, within  
231 available appropriations,] direct the captive insurance company  
232 established pursuant to section 1 of this act, to pay on a current basis  
233 any costs in excess of the local or regional board's basic contribution  
234 paid by such board in accordance with the provisions of this subsection.  
235 Any amounts paid by the State Board of Education on a current basis  
236 pursuant to this subsection shall not be reimbursable in the subsequent  
237 year. Application for such grant [shall] may be made at any time by  
238 filing with the Department of Education, in such manner as prescribed  
239 by the commissioner, [annually on or before December first] a statement  
240 of the cost of providing special education pursuant to this subsection. [,   
241 provided a board of education may submit, not later than March first,  
242 claims for additional children or costs not included in the December  
243 filing.] Payment by the state for such excess costs shall be made by the  
244 captive insurance company to the local or regional board of education,  
245 [as follows: Seventy-five per cent of the cost in February and the balance  
246 in May.] The amount due [each town] to a board of education pursuant

247 to the provisions of this subsection shall be paid to the treasurer of [each]  
248 the town of such board of education entitled to such aid, [provided the  
249 treasurer shall treat such grant, or a portion of the grant, which relates  
250 to special education expenditures incurred in excess of such town's  
251 board of education budgeted estimate of such expenditures, as a  
252 reduction in expenditures by crediting such expenditure account, rather  
253 than town revenue. Such expenditure account shall be so credited no  
254 later than thirty days after receipt by the treasurer of necessary  
255 documentation from the board of education indicating the amount of  
256 such special education expenditures incurred in excess of such town's  
257 board of education budgeted estimate of such expenditures] and the  
258 treasurer shall pay all such aid to the board of education.

259 (c) Commencing with the fiscal year ending June 30, 1996, and for  
260 each fiscal year thereafter, within available appropriations, each town  
261 whose ratio of (1) net costs of special education, as defined in subsection  
262 (h) of section 10-76f, for the fiscal year prior to the year in which the  
263 grant is to be paid to (2) the product of its total need students, as defined  
264 in section 10-262f, and the average regular program expenditures, as  
265 defined in section 10-262f, per need student for all towns for such year  
266 exceeds the state-wide average for all such ratios shall be eligible to  
267 receive a supplemental special education grant. Such grant shall be  
268 equal to the product of a town's eligible excess costs and the town's base  
269 aid ratio, as defined in section 10-262f, provided each town's grant shall  
270 be adjusted proportionately if necessary to stay within the  
271 appropriation. Payment pursuant to this subsection shall be made in  
272 June. For purposes of this subsection, a town's eligible excess costs are  
273 the difference between its net costs of special education and the amount  
274 the town would have expended if it spent at the state-wide average rate.

275 (d) Notwithstanding the provisions of this section, for the fiscal years  
276 ending June 30, 2004, to June 30, 2007, inclusive, and for the fiscal years  
277 ending June 30, 2010, to June 30, [2021] 2019, inclusive, the amount of  
278 the grants payable to local or regional boards of education in accordance  
279 with this section, except grants paid in accordance with subdivision (2)  
280 of subsection (a) of this section, for the fiscal years ending June 30, 2006,

281 and June 30, 2007, and for the fiscal years ending June 30, 2010, to June  
282 30, [2021] 2019, inclusive, shall be reduced proportionately if the total of  
283 such grants in such year exceeds the amount appropriated for the  
284 purposes of this section for such year.

285 (e) For the fiscal year ending June 30, 2022, and each fiscal year  
286 thereafter, all funds appropriated for purposes of subsection (b) of this  
287 section shall be paid by the Comptroller, upon certification of the  
288 Commissioner of Education, to the captive insurance company,  
289 established pursuant to section 1 of this act. The captive insurance  
290 company shall expend such funds in accordance with said subsection  
291 (b).

292 Sec. 6. Section 10-262j of the 2020 supplement to the general statutes  
293 is amended by adding subsection (h) as follows (*Effective July 1, 2020*):

294 (NEW) (h) For the fiscal year ending June 30, 2022, each town may  
295 reduce its budgeted appropriation for education in an amount equal to  
296 the total special education excess cost of expenses incurred by the school  
297 district during the fiscal year ending June 30, 2021.

298 Sec. 7. Subsection (c) of section 10-262i of the 2020 supplement to the  
299 general statutes is repealed and the following is substituted in lieu  
300 thereof (*Effective July 1, 2020*):

301 (c) All aid distributed to a town pursuant to the provisions of this  
302 section and section 10-262u shall be expended for educational purposes  
303 only and shall be expended upon the authorization of the local or  
304 regional board of education and in accordance with the provisions of  
305 section 10-262u. For the fiscal year ending June 30, 1999, and each fiscal  
306 year thereafter, if a town receives an aid increase, [in funds pursuant to  
307 this section over the amount it received for the prior fiscal year,] as  
308 described in subsection (d) of this section, such aid increase shall not be  
309 used to supplant local funding for educational purposes. [The] For  
310 purposes of this section and section 10-262j, as amended by this act, the  
311 budgeted appropriation for education in any town receiving an aid  
312 increase [in funds pursuant to this section] shall be not less than the

313 amount appropriated for education for the prior year plus such aid  
314 increase, [in funds] except all funds received from reimbursement  
315 payments pursuant to subsection (b) of section 10-76g, as amended by  
316 this act, shall not be included in the calculation of a town's budgeted  
317 appropriation for education.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>July 1, 2021</i>	10-76g
Sec. 6	<i>July 1, 2020</i>	10-262j
Sec. 7	<i>July 1, 2020</i>	10-262i(c)

**Statement of Purpose:**

To establish a special education excess cost cooperative.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*