February 20, 2009

SENATE BILL No. 486

DIGEST OF SB 486 (Updated February 19, 2009 10:28 am - DI 110)

Citations Affected: IC 27-1.

Synopsis: Municipality self-insurance. Provides for establishment of a municipal government consortium to create a self-insurance fund. Specifies requirements for registration of a self-insurance fund by the department of insurance.

Effective: Upon passage.

Paul, Simpson

January 15, 2009, read first time and referred to Committee on Insurance and Financial Institutions.
February 19, 2009, reported favorably — Do Pass.

C o p y

February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 486

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-1-39.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 39.1. Municipal Government Self-Insurance Fund

Sec. 1. As used in this chapter, "affiliate" means a person that directly or indirectly, through one (1) or more intermediaries:

(1) controls;

(2) is controlled by; or

(3) is under common control with;

another person.

Sec. 2. As used in this chapter, "bureau" has the meaning set forth in IC 27-7-2-2.

Sec. 3. As used in this chapter, "consortium" refers to a consortium established under section 17 of this chapter.

Sec. 4. As used in this chapter, "contribution" means money contributed by a member to a self-insurance fund to fund payments for past, current, or future liabilities.

Sec. 5. As used in this chapter, "founding members" means the original members of a consortium.

Sec. 6. As used in this chapter, "fund balance" means total assets in excess of total liabilities of a self-insurance fund. The term does not include assets pledged to secure debts not reflected on the books of a self-insurance fund. However, the term includes other:

(1) contributed capital;

(2) retained earnings;

(3) liquid capital; and

(4) loss fund assets;

in a self-insurance fund.

Sec. 7. As used in this chapter, "loss fund" means a segregated fund consisting of amounts that may be used with a self-insurance fund to satisfy the requirements of section 20(c)(5) of this chapter.

Sec. 8. As used in this chapter, "member" means a municipality that is part of a consortium.

Sec. 9. As used in this chapter, "municipality" has the meaning set forth in IC 36-1-2-11.

Sec. 10. As used in this chapter, "NAIC" refers to the National Association of Insurance Commissioners.

Sec. 11. As used in this chapter, "NAIC examiner's handbook" has the meaning set forth in IC 27-1-3.1-6.

Sec. 12. As used in this chapter, "participation agreement" means a document under which a member undertakes and agrees to fulfill obligations as a participant in a consortium's self-insurance fund.

Sec. 13. As used in this chapter, "qualified actuary" means an actuary who:

(1) is not an employee of a consortium or third party administrator; and

(2) is a:

(A) fellow of the Society of Actuaries; or

(B) member of the:

(i) Casualty Actuarial Society; and

(ii) American Academy of Actuaries.

Sec. 14. As used in this chapter, "qualified financial institution" means an institution that:

(1) is a:

(A) national bank;

(B) state bank; or

(C) trust company;

that is a member of the Federal Reserve System;

C o p y

(2) has been granted authority to operate with fiduciary powers; and

(3) is:

(A) regulated;

(B) supervised; and

(C) examined;

by federal or state authorities having regulatory authority over banks and trust companies.

Sec. 15. As used in this chapter, "self-insurance fund" means a trust created by a consortium under Indiana law to provide money sufficient to:

(1) cover self-insured risk retained by the consortium; and

(2) pay:

(A) premiums for stop-loss insurance;

(B) for administration of the trust;

(C) costs related to risk management programs for the trust and members of the consortium; and

(D) other costs related to the trust.

Sec. 16. As used in this chapter, "stop-loss insurance" means coverage provided by an insurance policy issued by an insurer that is authorized to do business in Indiana for claims in excess of the individual or aggregate claim payment limit that applies to a self-insurance fund. The term includes stop-loss insurance, excess insurance, and reinsurance.

Sec. 17. (a) Notwithstanding any other law, two (2) or more municipalities may establish a consortium through which the municipalities jointly:

(1) create and maintain a self-insurance fund to cover certain retained risks;

(2) manage certain retained risks; and

(3) purchase stop-loss insurance.

(b) The coverage for retained risks that is provided by:

(1) a self-insurance fund; or

(2) stop-loss insurance covering a self-insurance fund;

may include the types of coverage described in section 23(a) of this chapter.

Sec. 18. A consortium must be governed by a board of trustees comprised entirely of representatives of the consortium's members. The board of trustees shall operate a self-insurance fund under a trust agreement.

Sec. 19. (a) A self-insurance fund created under section 17 of this chapter is subject to regulation by the department as follows:

C o p y

(1) The self-insurance fund must be registered with the department.

(2) The self-insurance fund must:

(A) retain a total risk to the self-insurance fund of not more than one hundred percent (100%) of expected claims for the succeeding year; and

(B) obtain stop-loss insurance issued by an insurer authorized to do business in Indiana to cover losses in excess of the amount of risk retained under clause (A).

(3) Contributions must be set to fund one hundred percent (100%) of the total risk retained under subdivision (2)(A) plus all other costs related to the self-insurance fund.

(4) The self-insurance fund administrator shall maintain a fidelity bond:

(A) in an amount approved by the department;

(B) covering each person responsible for the self-insurance fund; and

(C) to protect against acts of fraud or dishonesty in servicing the self-insurance fund.

(5) The self-insurance fund is subject to IC 27-4-1-4.5 regarding claims settlement practices.

(6) The self-insurance fund administrator shall, not later than March 1 of each year, file an annual financial statement for the self-insurance fund in the form required by IC 27-1-3-13.

(7) The self-insurance fund is not a member of the Indiana insurance guaranty association under IC 27-6-8. The liability of each member to the self-insurance fund is joint and several. The members may be assessed by the consortium's board of trustees for expenses of the self-insurance fund that exceed contributions and available insurance coverage.

(8) The self-insurance fund is subject to examination by the department under IC 27-1-3.1. All costs associated with an examination must be paid with money from the self-insurance fund.

(9) The department may deny, suspend, or revoke the registration of the self-insurance fund if the commissioner finds that the:

(A) self-insurance fund is in a hazardous financial condition;

(B) self-insurance fund's administrator or consortium's board of trustees refuses to be examined or produce records for examination; or

C o p y

(C) self-insurance fund's administrator or consortium's board of trustees has failed to pay a final judgment rendered against the self-insurance fund by a court within thirty (30) days after the date the final judgment is entered.

(10) IC 27-1-3-10.5, IC 27-1-3-11, and IC 27-1-3.1 apply to the self-insurance fund.

(b) A consortium, through the consortium's self-insurance fund, is not considered to be engaged in the business of insurance or required to obtain a certificate of authority from the department under this title.

Sec. 20. (a) To obtain a certificate of registration for a self-insurance fund, a consortium's board of trustees shall submit an application on a form prescribed by the department and submit the completed form to the department with the following:

(1) Copies of all current articles, bylaws, participation agreements, trusts, and other documents describing the rights and obligations of members.

(2) The most recent audited financial statement or, in the case of a start-up operation, a pro forma financial statement of the self-insurance fund for the next twelve (12) months.

(3) Proof of a fidelity bond protecting the money, securities, and other property of the self-insurance fund written for:

(A) coverage that is equal to not less than the coverage purchased for the self-insurance fund under insurance policies that cover employee theft or employee dishonesty; and

(B) an amount equal to at least the suggested minimum amount of fidelity bond coverage according to the formula contained in the NAIC examiner's handbook.

(4) A business plan for the self-insurance fund.

(5) Results of a feasability study required by section 21 of this chapter.

(6) A signed statement from the chief executive of each founding member acknowledging having read the results of the feasibility study and individually making a determination to:

(A) establish, and participate as a member of, the consortium; and

(B) create, and participate in, the self-insurance fund.

(7) Copies of the following:

(A) Coverage forms, rules, rates on which contributions

C o p y

will be based, and underwriting guidelines to be used in administration of the self-insurance fund.

(B) All insurance policies in force that will be replaced or supplemented by coverage under the self-insurance fund.

(C) An organizational chart illustrating the structure of all members and of the consortium.

(D) Agreements with providers of services to the self-insurance fund.

(E) Stop-loss insurance agreements, including specification of the stop-loss insurance attachment point and aggregate risk retention amount.

(F) If the consortium offers worker's compensation coverage through an insurance policy, a certificate of insurance evidencing compliance with section 23(c) of this chapter.

(G) Proposed marketing materials.

(8) A statement of the costs of coverage provided by the self-insurance fund, including an itemization of amounts for reserves, administration, and other expenses associated with operation of the self-insurance fund, provided by the feasibility study required by section 21 of this chapter.

(9) A statement of the self-insurance fund's contingency provisions, including a member assessment formula, for financing in the event of any of the following:

(A) Unexpectedly costly or ineffective risk financing.

(B) Ongoing expenses in excess of budgeted amounts.

(C) Outlays for unexpected or excessive losses.

(D) Incurred income loss or expenses.

(E) Adverse loss experience incurred due to withdrawal of members.

(10) The following to be used with respect to the self-insurance fund:

(A) A formula for use in reallocation and reassessment to account for an increase or decrease in membership.

(B) A formula for use in calculating contributions.

(C) A dividend:

(i) allocation formula; and

(ii) payment policy;

for distribution of any self-insurance fund surplus to the members.

(D) A formula for use in reassessment or reallocation of funds upon termination or liquidation of the self-insurance

C o p y

fund.

(11) Names and addresses of the following:

(A) The members of the consortium.

(B) The members of the board of trustees of the consortium.

(12) Biographical affidavits submitted on the form to be used by insurers as prescribed by the NAIC for the following:

(A) The members of the board of trustees of the consortium.

(B) The administrator of the self-insurance fund.

(C) Employees of the administrator or consortium who perform:

(i) actuarial;

(ii) financial;

(iii) legal;

(iv) loss control;

(v) underwriting; and

(vi) claims;

functions related to administration of the self-insurance fund.

(D) Any other individual who has decision making authority with respect to the self-insurance fund.

(13) The application filing fee specified in section 34 of this chapter.

(b) Upon receipt of an application for registration, the commissioner:

(1) shall examine the application and documents submitted by the applicant; and

(2) may:

(A) request any additional information that the commissioner considers relevant;

(B) conduct an investigation under IC 27-1-3.1 if the commissioner determines an investigation is necessary;

(C) examine under oath any person that is interested in or connected with the consortium; and

(D) grant or deny a certificate of registration, according to the requirements specified in subsection (c).

(c) The commissioner may grant a certificate of registration only if the commissioner finds all the following:

(1) The consortium:

(A) consists of at least two (2) municipalities;

(B) is governed by a board of trustees that:

C o p y

(i) operates the self-insurance fund under a trust agreement;
(ii) has complete fiscal control over the self-insurance fund;
(iii) is responsible for all operations of the self-insurance fund; and
(iv) consists of employees of members;
(C) is:
(i) mutual in organizational form;
(ii) assessable; and
(iii) a nonprofit organization; and
(D) possesses adequate facilities and competent personnel through:
(i) the consortium's own facilities and personnel; or
(ii) a contract with a third party administrator;
to administer the consortium's self-insurance fund.
(2) The consortium's self-insurance fund is controlled and sponsored directly by the members.
(3) At least two (2) members have completed participation applications for participation in the self-insurance fund.
(4) The self-insurance fund has a written commitment, binder, or policy for stop-loss insurance that:
(A) is issued by an insurer that is:
(i) authorized to do insurance business in Indiana; and
(ii) has an A.M. Best rating of at least A-, or the equivalent;
(B) will provide written notice to the commissioner at least sixty (60) days before the stop-loss insurance is canceled or not renewed; and
(C) has an aggregate risk retention for the self-insurance fund equal to not more than one hundred percent (100%) of the amount of expected claims for the succeeding year.
(5) The self-insurance fund contributions are:
(A) set to fund at least one hundred percent (100%) of the aggregate risk retention plus all other costs related to the self-insurance fund; and
(B) deposited in the self-insurance fund or a loss fund associated with the self-insurance fund:
(i) before the first date on which any coverage under the self-insurance fund begins; and
(ii) in an amount sufficient to fund all claims to be paid by the self-insurance fund before the stop-loss insurance

C o p y

attachment point is reached.

(6) The consortium has adopted procedures for the self-insurance fund that are acceptable to the commissioner for the following:

(A) The routine handling of claims.

(B) Handling claims in the event of dissolution of the self-insurance fund.

(7) The consortium:

(A) has obtained a fidelity bond in the amount required by subsection (a)(3); and

(B) will operate the self-insurance fund in accordance with sound actuarial principles.

(8) All assets of the self-insurance fund are:

(A) held in trust in the name of the self-insurance fund in a qualified financial institution; and

(B) invested as described in IC 27-1-13-3(b) or in a another manner that is specifically approved by the commissioner.

(9) The self-insurance fund's dividend:

(A) allocation formula; and

(B) payment policy;

are acceptable to the commissioner.

(10) The self-insurance fund's participation application and participation agreement contain the language required by section 33 of this chapter.

(d) If the commissioner denies an application for registration, the commissioner shall send written notice to the applicant:

(1) specifying the reasons for the denial; and

(2) providing notice of the applicant's right to, within sixty (60) days after the applicant receives the notice, request a hearing under IC 4-21.5. An adverse hearing result is subject to judicial review under IC 4-21.5-5.

(e) The administrator of a self-insurance fund may:

(1) commingle the funds of the members; and

(2) invest funds using a common investment policy.

Sec. 21. (a) A consortium shall, before submitting an application under section 20 of this chapter, obtain a feasibility study performed by a qualified actuary or another professional approved by the commissioner. The feasibility study must include the following:

(1) An estimate of the contributions necessary to cover losses and expenses for the proposed self-insurance fund.

(2) The qualified actuary's or professional's opinion

C o p y

concerning whether the self-insurance fund is an appropriate vehicle to provide coverage for the risks of the founding members.

(3) Consideration of the risks for which the self-insurance fund will provide coverage.

(4) The amounts of initial capital and expenses the founding members will commit to the self-insurance fund from the founding members' own resources until the self-insurance fund becomes self-supporting.

(5) A description of the types of services that will be required for administration of the self-insurance fund and possible sources of the services, including the following:

(A) Actuarial services.

(B) Financial services.

(C) Legal services.

(D) Management services.

(6) Goals and future changes anticipated by the consortium.

(b) The results of the feasibility study required by subsection (a) must separately address each of the following:

(1) A risk management analysis to determine the lines of coverage and types of losses that could best be financed through the self-insurance fund.

(2) An operational analysis to project the costs and benefits under different scenarios that the founding members could expect from the most reasonable use of a self-insurance fund.

Sec. 22. (a) A self-insurance fund participation agreement must include the following:

(1) Procedures for individual member initiation of participation and withdrawal, including the following:

(A) Provision for an ownership or investment interest of the member.

(B) The length of the member's initial participation period.

(C) Penalty for withdrawal from the self-insurance fund.

(D) Right of the member to self-insurance fund assets or income.

(E) Obligation of the member for continuing liability for current and future expenses of the self-insurance fund.

(F) The self-insurance fund's continuing obligation to calculate and report to the member the self-insurance fund's incurred but not reported losses during the member's period of participation in the self-insurance fund.

C o p y

(G) The formula used to determine how the:
(i) assets;
(ii) liabilities;
(iii) income; and
(iv) expenses;
of the self-insurance fund are apportioned or reapportioned among members participating in the self-insurance fund when members begin participation or withdraw from participation in the self-insurance fund.
(H) Delineation of voting rights of members participating in the self-insurance fund during and after participation periods.
(2) An individual member's right to obtain, within thirty (30) days after the date of request, the individual member's loss experience for all lines of coverage purchased by the member for the period during which the member participates in the self-insurance fund.
(3) Procedures for termination of the self-insurance fund, including allocation of current and future:
(A) assets;
(B) liabilities;
(C) income; and
(D) expenses;
among members currently and formerly participating in the self-insurance fund.
(4) A provision specifying:
(A) that written notice must be provided by:
(i) the self-insurance fund administrator to a member concerning termination of the member's coverage under; or
(ii) a member to the self-insurance fund administrator concerning withdrawal of the member from participation in;
the self-insurance fund; and
(B) a period that:
(i) begins at least ninety (90) days; and
(ii) ends not more than one hundred twenty (120) days;
before the effective date of the termination or withdrawal described in clause (A) during which the written notice required under clause (A) must be provided.
(b) A participation agreement may not include any of the following:

C o p y

(1) A provision:

(A) relieving the self-insurance fund of liability; and

(B) requiring a withdrawing member to individually assume liability;

upon termination of the self-insurance fund, for any known or unknown pooled losses or claims against the self-insurance fund that occurred during the period of the withdrawing member's participation in the self-insurance fund.

(2) A provision that entitles a member participating in the self-insurance fund to segregated investment of the member's contributions.

Sec. 23. (a) A self-insurance fund may provide any type of coverage described in IC 27-1-5-1.

(b) A new member may obtain coverage under a consortium's self-insurance fund at any time. The term of commitment of a member to renew participation in a self-insurance fund is for a twelve (12) month term concurrent with the self-insurance fund's operating fiscal year.

(c) If a consortium provides worker's compensation coverage through an insurance policy:

(1) the insurer shall:

(A) provide the type of primary or excess insurance coverage described in Class 2(b) of IC 27-1-5-1; and

(B) comply with all requirements of IC 27-7-2; and

(2) the consortium or the insurer shall file the data report required by IC 27-7-2-20 for the self-insurance fund and for each member that participates in the worker's compensation coverage.

(d) A self-insurance fund that provides employee health, dental, or vision coverage is not a multiple employer welfare arrangement under IC 27-1-34.

Sec. 24. (a) Member contributions to a self-insurance fund must be established by the consortium's board of trustees based on all the following factors:

(1) The funding level of a loss fund recommended by the self-insurance fund's actuary in accordance with this chapter. Contributions to a loss fund or a self-insurance fund must be based on actuarial and financial assumptions regarding the self-insurance fund's:

(A) members' collective loss experience;

(B) operating expenses;

(C) investment income;

C o p y

(D) dividend;
(E) projections;
(F) allocation formula; and
(G) payment policy.
(2) Cost of stop loss insurance.
(3) Administrative expenses, including the following:
(A) Claims adjusting.
(B) Program administration.
(C) Loss prevention.
(D) Actuarial services.
(E) Legal services.
(F) Accounting services.
(G) Regulatory fees.
(H) Board meeting costs.
(I) General administration.

(b) A self-insurance fund's contribution and rating plan must be:
(1) adopted by the consortium's board of trustees; and
(2) filed annually with the department.

Sec. 25. (a) A self-insurance fund administrator shall do the following:
(1) Maintain loss data and coverage information for each individual member on an annual basis.
(2) Upon a request from a member currently or formerly participating in the self-insurance fund and with written notice:
(A) to the self-insurance fund administrator; and
(B) determined by the commissioner to be reasonable;
provide the member's loss data and coverage information to the member.
(3) Maintain and update, on a fiscal year basis, accounting records reflecting the self-insurance fund's total actual, unpaid, accrued, and reserved:
(A) assets;
(B) liabilities;
(C) surplus; and
(D) expenses.
(4) Allocate among the members participating in the self-insurance fund the total surplus and liability of the self-insurance fund:
(A) calculated through the use of a formula that is developed by the self-insurance fund's actuary; and

C o p y

(B) representing the self-insurance fund's retained risk potential and total estimated assessment, if an assessment were to be made, of each member for the period of the member's participation in the self-insurance fund.

(5) Annually estimate the amount of each member's total individually accrued liability to the self-insurance fund and the potential assessment for the period of the member's participation in the self-insurance fund.

(b) If the consortium provides worker's compensation coverage through an insurance policy, the self-insurance fund administrator shall maintain and provide, at the request of a member, the individual member's experience modification factor calculated in accordance with the rules of the bureau.

Sec. 26. (a) A self-insurance fund administrator shall file an annual report with the commissioner not later than March 1 of the year following the end of the self-insurance fund's fiscal year. The annual report must be verified by the oath of the chairperson of the consortium's board of trustees.

(b) An annual report filed under subsection (a) must summarize the business activities of the self-insurance fund for the self-insurance fund's immediately preceding fiscal year and include all the following:

(1) Management discussion and analysis.

(2) Financial statements.

(3) A rate and reserve analysis prepared and certified by a qualified actuary or another professional approved by the commissioner that reflects all the following:

(A) That the self-insurance fund is operated in accordance with sound actuarial principles.

(B) A description and explanation of actuarial:

(i) assumptions; and

(ii) methods;

used in administering the self-insurance fund.

(C) That the self-insurance fund maintains:

(i) aggregate risk retention of; and

(ii) a stop-loss insurance policy with an attachment point at;

not more than one hundred percent (100%) of the amount of expected claims for the succeeding year.

(4) If the self-insurance fund has been examined by a regulatory authority:

(A) identification of the authority that conducted the

C o p y

examination; and

(B) a copy of the examination report.

(5) The self-insurance fund's contribution and rating plan required by section 24 of this chapter.

(6) The names and addresses of all members participating in the self-insurance fund.

(7) Any material changes to the initial application for the certificate of registration.

Sec. 27. (a) The commissioner or the commissioner's designee may examine the affairs of a registered self-insurance fund or an applicant for registration under this chapter.

(b) The board of trustees of a consortium shall ensure that a person conducting an examination under this section has free access to all the books, records, and documents that relate to the business of the self-insurance fund and may examine under oath the self-insurance fund's or consortium's:

(1) trustees;

(2) administrators;

(3) officers;

(4) agents; and

(5) employees;

in relation to the affairs, transactions, and conditions of the self-insurance fund.

(c) Costs and expenses related to an examination conducted under this section must be paid from the self-insurance fund.

(d) An examination conducted under this section must be conducted in accordance with IC 27-1-3.1 and may cover financial or market conduct issues.

Sec. 28. A consortium must:

(1) have and maintain a place of business in Indiana; and

(2) make available to the commissioner complete records of the self-insurance fund's:

(A) assets;

(B) transactions; and

(C) affairs;

in accordance with methods and systems that are customary for or suitable to the types of coverage provided through the self-insurance fund.

Sec. 29. (a) The commissioner may deny, suspend, or revoke a certificate of registration granted under this chapter if the commissioner finds that a self-insurance fund has failed to meet the requirements of this chapter or any other applicable statute.

C o p y

(b) If a self-insurance fund's certificate of registration is denied, suspended, or revoked under this section, the commissioner shall notify the consortium's board of trustees and advise the board of trustees in writing of the reasons for the denial, suspension, or revocation.

(c) A consortium's board of trustees may, not later than sixty (60) days after receiving notice from the commissioner under subsection (b), request a hearing under IC 4-21.5-3 to:

(1) be held not more than sixty (60) days after the date the board of trustees receives the notice; and

(2) determine the reasonableness of the commissioner's action.

A final order of the commissioner is subject to judicial review under IC 4-21.5-5.

(d) The commissioner shall deny, suspend, or revoke a certificate of registration granted under this chapter if the commissioner finds that:

(1) the self-insurance fund has a negative fund balance;

(2) the self-insurance fund's administrator or the consortium's board of trustees has refused to:

(A) allow the self-insurance fund to be examined; or

(B) produce the self-insurance fund's accounts, records, and files for examination;

(3) an individual described in section 27(b) of this chapter has refused to:

(A) give information with respect to the self-insurance fund's affairs; or

(B) perform any other legal obligation related to an examination under section 27 of this chapter when required by the commissioner; or

(4) the self-insurance fund administrator or the consortium's board of trustees has failed to:

(A) pay a final judgment entered against the self-insurance fund in court; or

(B) post the assigned appeal bond;

within thirty (30) days after the date the final judgment is entered.

Sec. 30. A member may withdraw from participation in a self-insurance fund under the following conditions:

(1) The member has fulfilled any minimum time commitment required under the member's participation agreement.

(2) The member provides written notice:

(A) of the member's intent to withdraw; and

C o p y

(B) to the self-insurance fund administrator;

in accordance with the member's participation agreement as required by section 22 of this chapter.

Sec. 31. If a self-insurance fund is terminated for any reason, the following apply:

(1) The self-insurance fund may not be dissolved until all outstanding financial obligations of the self-insurance fund are paid.

(2) The self-insurance fund administrator shall retain sufficient funds to provide coverage for an additional period that the board of trustees considers prudent.

(3) The board of trustees may purchase additional insurance for protection against potential future claims.

(4) Any funds remaining in the self-insurance fund, after satisfaction of all obligations, must be paid:

(A) to members participating in the self-insurance fund at the time that all other obligations of the terminated self-insurance fund have been satisfied; and

(B) in an equitable manner approved by the commissioner.

Sec. 32. (a) Each member participating in a self-insurance fund is jointly and severally liable for the obligations of the self-insurance fund.

(b) Each member has contingent assessment liability for payment of actual losses and expenses incurred during the member's participation in a self-insurance fund.

Sec. 33. (a) A participation application and a participation agreement must contain the following statement:

"This is a fully assessable contract. In the event (name of the self-insurance fund) is unable to pay its obligations, participating members will be required to contribute, through an equitable assessment, the money necessary to meet any unfulfilled obligations.".

(b) A participation agreement must contain a statement notifying the prospective member concerning the contingent assessment liability under section 32 of this chapter of members participating in the self-insurance fund.

(c) Each participation application and coverage form used with respect to a self-insurance fund must contain the following notice:

"Your coverage is provided by a self-insurance fund. The self-insurance fund is regulated by the Indiana Department of Insurance. State insurance guaranty funds are not available for your self-insurance fund.".

C o p y

Sec. 34. (a) The following fees apply to a self-insurance fund:

(1) A nonrefundable application filing fee of three hundred fifty dollars ($350) for an application for a certificate of registration.

(2) An annual internal audit fee of two hundred fifty dollars ($250) for each registered self-insurance fund.

(3) An annual report filing fee of one hundred dollars ($100) for the annual report required by section 26 of this chapter.

(b) The commissioner shall deposit fees collected under this section into the department of insurance fund established by IC 27-1-3-28.

Sec. 35. (a) A person that provides services to a self-insurance fund shall fully and completely disclose to the self-insurance fund administrator all compensation received by the person in relation to the services provided. The disclosure must be:

(1) in writing; and

(2) delivered to the self-insurance fund administrator not later than March 1 of each year.

(b) An insurance producer and an affiliate of an insurance producer shall not accept or receive any compensation from an insurer or other third party for placement of insurance for a self-insurance fund unless the insurance producer or affiliate has, before the insurance is purchased, obtained the written acknowledgment and consent of the self-insurance fund administrator.

(c) If the commissioner finds that a person has materially violated this section, a self-insurance fund may not continue to receive services from the person. The commissioner shall notify a self-insurance fund administrator and the person in writing of the reasons for the finding.

(d) Not later than sixty (60) days after receiving a notice from the commissioner under subsection (c), a self-insurance fund administrator or the person may request a hearing under IC 4-21.5-3 to determine the reasonableness of the commissioner's action.

(e) A hearing requested under subsection (d) must be conducted not more than sixty (60) days after the date the commissioner receives the request.

Sec. 36. For purposes of this chapter, an actuary shall express expected claims at a confidence level of at least seventy-five percent (75%).

Sec. 37. (a) A municipality's participation as a member under

C o p y

this chapter does not affect the municipality's ability to assert:

(1) an immunity or a defense under IC 34; or

(2) another governmental immunity or defense.

(b) A consortium may assert any immunity or defense to which a member is entitled with respect to a claim against the consortium or the consortium's self-insurance fund.

Sec. 38. The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 27-1-34-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. This chapter does not apply to **any of the following:**

(1) A multiple employer welfare arrangement which offers or provides benefits which are fully insured by an authorized insurer. ~~or to~~

(2) An arrangement which is exempt under the federal Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.).

(3) A self-insurance fund established under IC 27-1-39.1.

SECTION 3. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 486, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 486 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 1.

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