

IC 27-1-29.1

Chapter 29.1. Political Subdivision Catastrophic Liability Fund

IC 27-1-29.1-1

"Commission" defined

Sec. 1. As used in this chapter, "commission" refers to the Indiana political subdivision risk management commission established by IC 27-1-29-5.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-2

"Fund" defined

Sec. 2. As used in this chapter "fund" refers to the political subdivision catastrophic liability fund established by this chapter.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-3

"Liability" defined

Sec. 3. As used in this chapter, "liability" means an obligation arising from:

- (1) multiple claims for the payment of money that are within the limits set forth in IC 34-13-3-4 (or IC 34-4-16.5-4 before its repeal) and that arise from a single catastrophic occurrence; or
- (2) any other claim for which coverage is provided for members of the fund under rules adopted by the commission.

As added by P.L.272-1987, SEC.7. Amended by P.L.1-1998, SEC.146.

IC 27-1-29.1-4

"Member" defined

Sec. 4. As used in this chapter "member" refers to any political subdivision that has a membership in the fund, as provided in section 9 of this chapter.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-5

"Political subdivision" defined

Sec. 5. As used in this chapter, "political subdivision" has the meaning set forth in IC 34-6-2-110.

As added by P.L.272-1987, SEC.7. Amended by P.L.3-1989, SEC.152; P.L.1-1998, SEC.147.

IC 27-1-29.1-6

"Underlying coverage" defined

Sec. 6. As used in this chapter, "underlying coverage" refers to any liability insurance policy that names a member of the fund or its officials or employees as a named insured, an additional named insured, an insured, or an additional insured.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-7

Establishment of fund; purpose; administration; expenses; depositories; investment

Sec. 7. (a) The political subdivision catastrophic liability fund is established for the purpose of:

- (1) paying a part of certain liabilities of members of the fund under this chapter;
- (2) receiving assessments paid by fund members to replenish the fund and to pay the principal of the interest on bonds or notes issued by the commission under IC 27-1-29-17(b)(1); and
- (3) receiving money from any other source.

(b) The fund shall be administered by the commission, using the powers granted in IC 27-1-29-7, as modified by this chapter.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) All money received by the commission under this chapter, whether as assessments, proceeds from the sale of bonds, or revenues, are trust funds, to be held and applied solely as provided in this chapter. Current operating funds shall be kept in depositories selected by the commission. The commission shall deposit with the treasurer of state the money in the fund not currently needed to meet the obligations of the fund, and the treasurer of state shall invest such money for the commission in accordance with the provisions of any resolution or trust agreement that the commission may adopt or enter into under this chapter or IC 27-1-29. Interest that accrues from these investments shall be credited to the commission and to the fund.

(e) Money in the fund at the end of a fiscal year does not revert to the state general fund.

As added by P.L.272-1987, SEC.7. Amended by P.L.159-1988, SEC.1.

IC 27-1-29.1-8

Reserve account; issuance of bonds to establish account; use of funds

Sec. 8. (a) The commission shall establish a reserve account in the fund. A balance of at least five million dollars (\$5,000,000) must remain in the reserve account. To provide money to establish the reserve account, the commission may issue bonds under IC 27-1-29-17(b)(1). The bonds issued to provide money for the establishment of the reserve account may not exceed a total amount of forty million dollars (\$40,000,000).

(b) Money in the reserve account shall be held and applied solely to pay claims against the fund that cannot be paid from other money in the fund.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-9

Membership eligibility; rights and duties

Sec. 9. All political subdivisions that satisfy the criteria for membership under the rules of the commission are eligible for

membership in the fund. A political subdivision is not required to be a member of the political subdivision risk management fund under IC 27-1-29 to be eligible for membership in the fund established by this chapter. Each member of the fund:

- (1) shall contribute to the fund in the amount of the assessment charged the member under this chapter; and
- (2) is entitled to the partial payment of certain liabilities from the fund under this chapter.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-10

Liabilities qualifying for partial payment from fund; notice of claim

Sec. 10. (a) The commissioner, using money from the fund, shall pay a part of every liability that qualifies for partial payment under this chapter and under the terms of the coverage provided by the commission according to rules adopted under this chapter.

(b) A liability of a member of the fund that has no underlying coverage or that has occurrence basis underlying coverage qualifies for partial payment under this chapter if it:

- (1) is a liability covered under the coverage document issued by the commission to the member;
- (2) arises out of an act or omission that takes place while the political subdivision bearing the liability is a member of the fund; and
- (3) satisfies the minimum total amount requirement set forth in section 12 of this chapter.

(c) A liability of a member of the fund that has claims made basis underlying coverage qualifies for partial payment under this chapter if it:

- (1) is a liability covered under the coverage document issued by the commission to the member;
- (2) arises out of an act or omission with respect to which a claim is made while the political subdivision bearing the liability is a member of the fund;
- (3) is covered by the underlying coverage; and
- (4) satisfies the minimum total amount requirement set forth in section 12 of this chapter.

(d) For the purposes of subsection (c)(2) and section 11 of this chapter, the question of when and how a claim is made shall be determined by the provisions of the insurance policy providing the underlying coverage. However, if the underlying coverage is not applicable to a liability, a claim is considered to have been made for purposes of subsection (c)(2) when notice of a claim giving rise to the liability is received by the fund member from the claimant or the claimant's representative.

As added by P.L.272-1987, SEC.7. Amended by P.L.159-1988, SEC.2.

IC 27-1-29.1-11

Preexisting liabilities qualifying for partial payment

Sec. 11. A liability that arises out of an act or omission that takes place before the political subdivision bearing the liability becomes a member of the fund does not qualify for partial payment under this chapter unless the liability:

- (1) is expressly covered by the provisions of a coverage document that:
 - (A) is issued to the fund member; and
 - (B) is in effect when the claim is made; and
- (2) is also covered by the underlying coverage that is claims made basis coverage.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-12

Liabilities of members that are or are not also members of political subdivision risk management fund; conditional payment

Sec. 12. (a) A liability of a member of the fund that is not a member of the political subdivision risk management fund under IC 27-1-29 does not qualify for partial payment under this chapter unless the total amount of the liability exceeds:

- (1) one million dollars (\$1,000,000); or
- (2) another sum that is:
 - (A) greater than one million dollars (\$1,000,000); and
 - (B) approved by the commission as a provision of the fund member's coverage because the fund member has underlying coverage with limits of liability that exceed one million dollars (\$1,000,000).

(b) A liability of a member of the fund that is also a member of the political subdivision risk management fund under IC 27-1-29 does not qualify for partial payment under this chapter unless the amount of the liability exceeds the amount of liability payable by the commission under IC 27-1-29 under the terms of the coverage document that is issued to the fund member and applicable to the liability.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-13

Liability partial payment determination; formula

Sec. 13. The amount that is to be paid by the commission toward the satisfaction of a liability qualifying for partial payment under this chapter is determined in STEP FOUR of the following formula:

STEP ONE: If the total amount of the liability exceeds five million dollars (\$5,000,000), subtract five million dollars (\$5,000,000) from the total amount of the liability.

STEP TWO: Add the remainder under STEP ONE to the minimum total amount figure that applies to the liability under section 12 of this chapter.

STEP THREE: Add to the sum determined under STEP TWO the total amount expended by the commission under section 16 of this chapter in defending the member of the fund against

claims giving rise to the liability.

STEP FOUR: Subtract the sum determined under STEP THREE from the total amount of the liability.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-14

Excess coverage provided

Sec. 14. The coverage of a liability under this chapter is excess of any and all other valid and collectible insurance and coverage under liability risk management, risk sharing, and risk financing pools or funds.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-15

Single or installment payments; limits

Sec. 15. An amount payable under section 13 of this chapter that is no more than ten thousand dollars (\$10,000) may be paid in a single, immediate payment. An amount payable under section 13 of this chapter that is greater than ten thousand dollars (\$10,000) shall be paid:

- (1) in installments under section 18(c) of this chapter; or
- (2) under a structured settlement negotiated under section 18(d) of this chapter.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-16

Defense of claims; expenses

Sec. 16. The commission may associate with a member of the fund in the defense of a claim and, if no defense is provided by the insurer providing the fund member's underlying coverage, the commission may defend the member and control that defense. Amounts expended by the commission from the fund under this section must be deducted under section 13 of this chapter from the amount to be paid by the commission toward the satisfaction of a liability.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-17

Biannual recognition of liabilities; payment; proration in event of insufficient funds

Sec. 17. On June 30 and December 31 of every year, the commission shall recognize every liability that has qualified for partial payment under this section during the six (6) month period that ended on that day. The commission shall pay the part of each liability that is payable under section 13 of this chapter within fifteen (15) days after the liability is recognized as qualifying for partial payment. However, if the balance in the fund is insufficient to pay the full payable amount of every liability that has qualified for partial payment during a six (6) month period, the commission shall pay a prorated portion of each liability that qualified for partial payment

during the period. Any part of the payable amount of a liability left unpaid due to the prorating of payments under this subsection must be paid before the payment of liabilities that qualify for partial payment during any of the following six (6) month periods.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-18

Punitive damages; bodily injury or property damage; installment payments; structured settlements

Sec. 18. (a) No amount may be paid from the fund in respect of punitive damages paid by or assessed against a member of the fund.

(b) No amount may be paid from the fund in the case of a liability based upon bodily injury or property damage arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water unless the discharge, dispersal, release, or escape:

(1) is caused by an act or omission of a political subdivision that is a member of the fund; and

(2) occurs as a result of:

(A) a household hazardous waste; or

(B) a conditionally exempt small quantity generator (as described in 40 CFR 261.5(a);

collection, disposal, or recycling project conducted by or controlled by the political subdivision.

(c) The commissioner may pay a liability of a member of the fund in a series of annual payments. The amount of any annual payment under this subsection based upon the injury to or death of one (1) person in any one (1) occurrence must be one hundred thousand dollars (\$100,000) or more, except for the final payment in a series of payments.

(d) The commission may negotiate a structured settlement of any claim.

(e) As used in this section, "household hazardous waste" means solid waste generated by households that consists of or contains a material that is:

(1) ignitable, as described in 40 CFR 261.21;

(2) corrosive, as described in 40 CFR 261.22;

(3) reactive, as described in 40 CFR 261.23; or

(4) toxic, as described in 40 CFR 261.24.

As added by P.L.272-1987, SEC.7. Amended by P.L.256-1995, SEC.2.

IC 27-1-29.1-19

Notice of intent to become member of fund

Sec. 19. (a) A political subdivision may become a member of the fund by filing a written notice of its intent to become a member with the commission by the latter of the following dates:

(1) December 31, 1987.

(2) The date exactly six (6) months before the expiration date of the liability insurance policy covering the political subdivision on December 31, 1987.

(b) Each political subdivision that files a notice of intent to become a member by the latter of the two (2) dates set forth in subsection (a) shall be granted membership in the fund. A political subdivision that files a notice of intent to become a member after the latter of the two (2) dates set forth in subsection (a) may be admitted to or rejected for membership in the fund at the discretion of the commission.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-20

Implementing rules; coverage limitations; commission powers; rules governing relinquishment of membership in fund

Sec. 20. (a) The commission shall adopt rules under IC 4-22-2 to implement this chapter.

(b) The commission, in accordance with the rules adopted under subsection (a), may, in whole or in part, conform or limit the coverage provided to a member of the fund under this chapter (as described in the coverage document issued to the member by the commission) with the provisions of insurance policies providing underlying coverage to the fund member.

(c) In accordance with the rules adopted under subsection (a), the commission may provide, to a member of the fund that is not a member of the political subdivision risk management fund under IC 27-1-29, coverage of a liability that exceeds the amount of one million dollars (\$1,000,000) but that is subject to reduction by exhaustion of the aggregate limits of liability in the fund member's underlying coverage.

(d) In accordance with the rules adopted under subsection (a), the commission may provide, to a member of the fund that is also a member of the political subdivision risk management fund under IC 27-1-29, coverage of liabilities for which no coverage is provided under IC 27-1-29.

(e) Except as otherwise specifically provided in this chapter, the commission has the same powers in the administration of the fund as it has in the administration of the political subdivision risk management fund under IC 27-1-29-7(b). A rule adopted by the commission to establish the procedure by which a political subdivision can withdraw from membership in the fund may not provide that a political subdivision continues to be a member of the fund more than twelve (12) months after the political subdivision gives notice to the commissioner of its intention to relinquish its membership.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-21

Relinquishment of membership in fund; prerenlinquishment liabilities; assessments

Sec. 21. After relinquishing its membership in the fund, a political subdivision remains liable for its pro rata share of assessments to pay for liabilities of fund members that arose out of claims based upon acts or omissions that took place while the political subdivision was a member of the fund. If a political subdivision fails to pay an assessment to which it is subject under this chapter, the commission may give notice to any department or agency of the state (including the treasurer of state or the auditor of state) that is the custodian of money payable to the delinquent political subdivision after the date of the notice, that the political subdivision is in default on the payment of an assessment under this chapter. After receiving this notice, the department or agency shall withhold the delinquent amount from the money payable to the political subdivision and pay over the money to the commission to be applied against the delinquent assessment.

As added by P.L.272-1987, SEC.7.

IC 27-1-29.1-22

Assessments on members of fund

Sec. 22. (a) The commission shall impose an assessment to be paid by each member of the fund. The assessments to be paid by members of the fund shall be determined by the commission and must be fair to all members, in consideration of the uniform application of actuarial principles and underwriters' rating principles and in consideration of the need to pay the principal of and interest on bonds or notes issued under IC 27-1-29-17(b)(1). A member shall pay its assessment in accordance with rules of the commission.

(b) The assessment for the first twelve (12) months of a political subdivision's membership in the fund shall be no greater than the payment made by the political subdivision to a commercial insurer for like coverage for the twelve (12) month period immediately preceding the political subdivision's application to become a member. In the case of an applicant not insured by a commercial insurer, the department shall set the amount of the assessment for the first twelve (12) months of membership in accordance with subsection (a).

As added by P.L.272-1987, SEC.7.