

IC 27-1-29

Chapter 29. Indiana Political Subdivision Risk Management Commission

IC 27-1-29-1

"Commission" defined

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

As added by P.L.162-1986, SEC.1.

IC 27-1-29-2

"Fund" defined

Sec. 2. As used in this chapter, "fund" refers to the political subdivision risk management fund established by this chapter.

As added by P.L.162-1986, SEC.1.

IC 27-1-29-3

"Liability" defined

Sec. 3. As used in this chapter, "liability" means an obligation arising from a claim for the payment of money in an amount established under IC 34-13-3 (or IC 34-4-16.5 before its repeal) or any other claim for which coverage is provided for members of the fund under rules adopted by the commission.

As added by P.L.162-1986, SEC.1. Amended by P.L.1-1998, SEC.141.

IC 27-1-29-4

"Political subdivision" defined

Sec. 4. As used in this chapter, "political subdivision" has the meaning set forth in IC 34-6-2-110.

As added by P.L.162-1986, SEC.1. Amended by P.L.5-1988, SEC.143; P.L.1-1998, SEC.142.

IC 27-1-29-5

Creation; purpose; membership; appointment; term; qualifications; vacancies; per diem and expenses; tax exempt property of commission

Sec. 5. (a) The Indiana political subdivision risk management commission is created as a separate body corporate and politic, constituting an instrumentality of the state for the public purposes set out in this chapter, but not a state agency. The commission is separate from the state in its corporate and sovereign capacity. The purpose of the commission is aiding political subdivisions in protecting themselves against liabilities. The commission is not subject to IC 27-6-8, and the Indiana guaranty association created by IC 27-6-8-5 has no obligation to insureds or claimants of the commission.

(b) The commission consists of the insurance commissioner, who shall serve as chairman, and ten (10) other commission members.

Except for the commissioner, the members of the commission shall be appointed by the governor for a term of four (4) years. No more than five (5) commission members appointed by the governor under this section may be members of the same political party. The commission members appointed by the governor under this section must include one (1) resident of each congressional district in Indiana. The commission shall elect one (1) of the appointed commission members as secretary of the commission.

(c) The initial appointments of commission members are for the following terms:

- (1) Three (3) members appointed for a term of one (1) year.
- (2) Three (3) members appointed for a term of two (2) years.
- (3) Two (2) members appointed for a term of three (3) years.
- (4) Two (2) members appointed for a term of four (4) years.

A commission member may be reappointed to the commission.

(d) In appointing commission members under this section, the governor shall consider the qualifications, expertise, and background that would provide the proper talent to administer this chapter. To the degree possible, the members must have backgrounds in educational administration, risk management, and governance of a political subdivision and must include persons with knowledge of insurance matters.

(e) A vacancy occurring on the commission shall be filled through the appointment of a resident of the same congressional district as the vacating commission member for the unexpired term of the commission member leaving the commission.

(f) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a commission member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency.

(g) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the commission member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency.

(h) All property of the commission is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments of the state or a political subdivision of the state.

As added by P.L.162-1986, SEC.1. Amended by P.L.272-1987, SEC.1.

IC 27-1-29-6

Meetings; actions

Sec. 6. The commission shall meet upon the call of the commissioner, who shall convene meetings as often as necessary to

accomplish the purposes of this chapter. The commission may act:

- (1) through the vote of a majority of members at a meeting at which at least six (6) members are present; or
- (2) through the commissioner, pursuant to powers granted to the commission under this chapter and delegated to the commissioner by the vote of a majority of members at a meeting at which at least six (6) members are present.

As added by P.L.162-1986, SEC.1.

IC 27-1-29-7

Powers of commission; limit on surcharge levied against members of fund; reports

Sec. 7. (a) The commission is granted all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes under this chapter and IC 27-1-29.1 including, but not limited to, and except as otherwise restricted in this chapter or IC 27-1-29.1:

- (1) The power to have perpetual existence as a body corporate and politic, and an independent instrumentality, but not a state agency, exercising essential public functions.
- (2) The power to sue and be sued.
- (3) The power to adopt and alter an official seal.
- (4) The power to make and enforce bylaws and rules for the conduct of its business, which bylaws and rules may be adopted by the commission without complying with IC 4-22-2.
- (5) The power to make contracts and incur liabilities, borrow money, issue its negotiable bonds or notes in accordance with this chapter, subject to provisions for registration of negotiable bonds and notes, and provide for and secure their payment and provide for the rights of their holders, and purchase and hold and dispose of any of its bonds or notes.
- (6) The power to acquire, hold, use, and dispose of its income, revenues, funds, and money.
- (7) The power to acquire, rent, lease, hold, use, and dispose of property for its purposes.
- (8) The power to fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.
- (9) The power to accept gifts or grants of property, funds, money, materials, labor, supplies, or services from the United States, any governmental unit, or any person, carry out the terms or provisions or make agreements with respect to the gifts or grants, and do all things necessary, useful, desirable, or convenient in connection with procuring, accepting, or disposing of the gifts or grants.
- (10) The power to do anything authorized by this article, through its officers, agents, or employees or by contracts with a person.
- (11) The power to procure insurance against any losses in connection with its property, operations, or assets in amounts

and from insurers as it considers desirable.

(12) The power to cooperate with and exchange services, personnel, and information with any federal, state, or local government agency.

(b) The commission may:

(1) implement a statewide program of loss control and risk management to minimize the liabilities of members of the fund;

(2) contract with any persons or entities to obtain or provide the services of risk managers, actuaries, loss control specialists, attorneys, and other professionals in carrying out its powers and duties under this chapter and to pay for those services from the fund;

(3) exercise control over the defense of members of the fund against tort claims, including the selection and retention of legal counsel, the direction of counsel in the conduct of cases, and the negotiation and acceptance or rejection of any settlement;

(4) establish procedures by which political subdivisions can gain or regain membership and relinquish membership in the fund;

(5) establish procedures and criteria for the imposition of assessments to be paid by members of the fund, and the payment of members' liabilities;

(6) establish programs for the payment of money from the fund to compensate members for damage to or loss of real or personal property;

(7) establish programs for the payment of:

(A) liabilities covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal); and

(B) liabilities that are not covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal), including, but not limited to, liability due to alleged violations of the Constitution of the United States or federal civil rights statutes by law enforcement officers;

(8) establish programs by which members can protect their elected officers and employees against liability arising from their alleged errors or omissions;

(9) establish procedures by which a member of the fund can settle small claims that are within the deductible provision of coverage under the fund;

(10) capitalize the fund by levying against each member of the fund an annual surcharge over and above the assessment imposed against the member under section 12 of this chapter; and

(11) establish any other programs or procedures the commission considers necessary for the implementation of this chapter.

The amount of the surcharge levied against a member of the fund for a particular year under subdivision (10) may not exceed twenty-five percent (25%) of the member's assessment for the same year.

(c) The commission shall file a report in an electronic format under IC 5-14-6 with the general assembly each year concerning the

operations of the commission and the condition of the fund.
As added by P.L.162-1986, SEC.1. Amended by P.L.272-1987, SEC.2; P.L.1-1998, SEC.143; P.L.28-2004, SEC.166.

IC 27-1-29-8

Expenses incurred; payment

Sec. 8. (a) All expenses incurred by the commission in administering the fund under this chapter shall be paid from the fund.

(b) All expenses incurred by the commission in administering the political subdivision catastrophic liability fund established by IC 27-1-29.1 shall be paid from the political subdivision catastrophic liability fund.

(c) All expenses incurred by the commission that are not incurred directly in connection with the administration of the political subdivision risk management fund or the political subdivision catastrophic liability fund shall be paid equally from each fund.

As added by P.L.162-1986, SEC.1. Amended by P.L.272-1987, SEC.3.

IC 27-1-29-9

Liability insurance or indemnification; state responsibility for commission obligations

Sec. 9. (a) The commission shall purchase liability insurance for, or otherwise indemnify, its members against personal liability for acts and omissions arising out of their performance, in good faith, of their duties as members of the commission.

(b) The state is not responsible for the payment of any obligation of the commission.

As added by P.L.162-1986, SEC.1.

IC 27-1-29-10

Political subdivision risk management fund; purpose; administration; expenses; depositories; investment; reserve account

Sec. 10. (a) The political subdivision risk management fund is established for the purpose of:

(1) paying the liabilities of political subdivisions to the extent specified in this chapter;

(2) receiving assessments paid by political subdivisions to replenish the fund and to pay the principal of and interest on bonds or notes issued by the commission under section 17(b)(2) of this chapter; and

(3) receiving money from any other source.

(b) The fund shall be administered by the commission.

(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 adopts or enters into under this chapter. 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 particular fiscal year does not revert to the state general fund.

(f) The commission shall create a reserve account in the fund and shall capitalize the reserve account through the surcharges levied under section 7(b)(10) of this chapter.

As added by P.L.162-1986, SEC.1. Amended by P.L.272-1987, SEC.4.

IC 27-1-29-11

Fund members; eligibility; assessments; surcharge levies; payment of liabilities

Sec. 11. All political subdivisions are eligible for membership in the fund. Each member of the fund:

- (1) shall contribute to the fund in the amount of the assessment charged the member under this chapter;
- (2) shall pay the annual surcharge levied against the member under this chapter; and
- (3) is entitled to payment of its liabilities from the fund under this chapter.

As added by P.L.162-1986, SEC.1.

IC 27-1-29-12

Assessments on members of fund

Sec. 12. (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 set in fairness to all members, based upon the uniform application of actuarial principles and underwriters' rating principles. 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 commission 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.162-1986, SEC.1.

IC 27-1-29-13

Payment of liabilities of members of fund; primary coverage

Sec. 13. (a) The commission shall pay liabilities of members of

the fund in accordance with rules established by the commission.

(b) Payment from the fund for any liability covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal) or for any other liability designated under rules adopted by the commission is primary coverage in relation to the following:

(1) Any insurance policy issued to a member of the fund that, by its terms, provides coverage secondary to coverage provided through membership in the fund.

(2) A fund member's own program of self insurance.

Payment of a liability identified in this subsection must be made within the limits set forth in section 14(b) of this chapter and irrespective of the existence of an insurance policy described in subdivision (1) or of a self insurance program described in subdivision (2).

As added by P.L.162-1986, SEC.1. Amended by P.L.1-1998, SEC.144.

IC 27-1-29-14

Eligibility and guidelines for payment from fund

Sec. 14. (a) In order to be eligible for payment under this chapter, a liability of a political subdivision must arise out of a claim based upon an act or omission that takes place while the political subdivision is a member of the fund.

(b) The maximum amount payable from the fund for any liability, whether or not it is covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal), is:

(1) for injury, death, or damage suffered by any one (1) person as a result of the act or omission from which the liability arises:

(A) three hundred thousand dollars (\$300,000) for a cause of action that accrues before January 1, 2006;

(B) five hundred thousand dollars (\$500,000) for a cause of action that accrues on or after January 1, 2006, and before January 1, 2008; or

(C) seven hundred thousand dollars (\$700,000) for a cause of action that accrues on or after January 1, 2008; and

(2) one million dollars (\$1,000,000) for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises.

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

(d) 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.
- (e) 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 must be one hundred thousand dollars (\$100,000) or more, except for the final payment in a series of payments.
- (f) The commission may negotiate a structured settlement of any claim.
- (g) 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.162-1986, SEC.1. Amended by P.L.273-1987, SEC.1; P.L.256-1995, SEC.1; P.L.1-1998, SEC.145; P.L.108-2003, SEC.1.

IC 27-1-29-15

Filing notice of intent to become member of fund; relinquishing membership in fund

Sec. 15. (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 date exactly six (6) months before the expiration date of the liability insurance policy covering the political subdivision on December 31, 1986.

(b) Each political subdivision that files a notice of intent to become a member of the fund by the date 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 date set forth in subsection (a) may be admitted to or rejected for membership in the fund at the discretion of the commission.

(c) A rule adopted by the commission to establish the procedures described in section 7(b)(4) of this chapter 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.

(d) 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 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.162-1986, SEC.1. Amended by P.L.273-1987, SEC.2; P.L.272-1987, SEC.5.

IC 27-1-29-16

Appointment of members; rules

Sec. 16. (a) The governor shall appoint the initial members of the commission by May 1, 1986.

(b) The commission shall adopt rules under IC 4-22-2 for the implementation of this chapter by October 1, 1986, and shall adopt other rules as required after that date.

As added by P.L.162-1986, SEC.1.

IC 27-1-29-17

Bonds or notes issued by commission; purposes; status; procedures

Sec. 17. (a) As used in this section:

- (1) "basic fund" refers to the political subdivision risk management fund established by this chapter; and
- (2) "catastrophic fund" refers to the political subdivision catastrophic liability fund established by IC 27-1-29.1.

(b) Before July 1, 2005, the commission may issue its bonds or notes in amounts that it considers necessary to provide funds to:

- (1) establish or maintain the reserve account in the catastrophic fund provided for in IC 27-1-29.1-8;
- (2) provide for the payment of liabilities payable out of the basic fund to the extent such liabilities exceed the money in the basic fund; and
- (3) pay, fund, or refund, regardless of when due, the principal of or interest or redemption premiums on bonds or notes issued under subdivision (1) or (2).

Bonds or notes issued under subdivision (2) must mature within three (3) years after their date of issuance.

(c) The bonds or notes of the commission may be issued and sold by the commission to the Indiana bond bank under IC 5-1.5.

(d) Every issue of bonds or notes is an obligation of the commission. An issue of bonds or notes under subsection (b)(1) is payable solely from assessments imposed by the commission under IC 27-1-29.1 on political subdivisions that are members of the catastrophic fund, and the commission may secure such bonds or notes by a pledge of assessments imposed under IC 27-1-29.1. An issue of bonds or notes under subsection (b)(2) is payable solely from assessments imposed by the commission under section 12 of this chapter on political subdivisions that are members of the basic fund, and the commission may secure such bonds or notes by a

pledge of assessments imposed under section 12 of this chapter.

(e) A bond or note of the commission:

- (1) is not a debt, liability, loan of credit, or pledge of the faith and credit of the state; and
- (2) must contain on its face a statement that the commission is obligated to pay principal and interest, and the redemption premium, if any, and that the faith, credit, and taxing power of the state are not pledged to the payment of the bond or note.

(f) The state pledges to and agrees with the holders of the bonds or notes issued under this chapter that the state will not:

- (1) limit or restrict the rights vested in the commission to fulfill the terms of any agreement made with the holders of its bonds or notes; or
- (2) in any way impair the rights or remedies of the holders of the bonds or notes;

until the bonds or notes, together with the interest on the bonds or notes, and interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met, paid, and discharged.

(g) The bonds or notes of the commission are negotiable instruments for all purposes of IC 26-1, subject only to the provisions of the bonds and notes for registration.

(h) Bonds or notes of the commission must be authorized by resolution of the commission, may be issued in one (1) or more series, and must:

- (1) bear the date;
- (2) mature at the time or times;
- (3) be in the denomination;
- (4) be in the form;
- (5) carry the conversion or registration privileges;
- (6) have the rank or priority;
- (7) be executed in the manner;
- (8) be payable from the sources in the medium of payment at the place inside or outside the state; and
- (9) be subject to the terms of redemption;

as the resolution of the commission or the trust agreement securing the bonds or notes provides.

(i) Bonds or notes may be issued under this chapter without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in this chapter.

(j) The rate or rates of interest on the bonds or notes may be fixed or variable. Variable rates shall be determined in the manner and in accordance with the procedures set forth in the resolution authorizing the issuance of the bonds or notes. Bonds or notes bearing a variable rate of interest may be converted to bonds or notes bearing a fixed rate or rates of interest, and bonds or notes bearing a fixed rate or rates of interest may be converted to bonds or notes bearing a variable rate of interest, to the extent and in the manner set forth in the resolution pursuant to which the bonds or notes are issued. The

interest on bonds or notes may be payable semiannually or annually or at any other interval or intervals as may be provided in the resolution, or the interest may be compounded and paid at maturity or at any other times as may be specified in the resolution.

(k) The bonds or notes may be made subject, at the option of the holders, to mandatory redemption by the commission at the times and under the circumstances set forth in the authorizing resolution.

(l) Bonds or notes of the commission may be sold at public or private sale at such price, either above or below the principal amount, as the commission fixes. If bonds or notes of the commission are to be sold at public sale, the commission shall comply with IC 5-1-11 and shall publish notice of the sale in accordance with IC 5-3-1-2 in two (2) newspapers published and of general circulation in Indianapolis.

(m) The commission may periodically issue its notes under this chapter and pay and retire the principal of the notes, pay the interest due on the notes, or fund or refund the notes from proceeds of bonds or of other notes or from other funds or money of the commission available for that purpose in accordance with a contract between the commission and the holders of the notes.

(n) The commission may secure any bonds or notes issued under this chapter by a trust agreement by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside Indiana.

(o) The trust agreement or the resolution providing for the issuance of the bonds or notes may contain provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as are reasonable and proper and not in violation of law.

(p) The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual right of action by the holders.

(q) In addition to the provisions of subsections (n) through (p), any trust agreement or resolution may contain other provisions the commission considers reasonable and proper for the security of the holders of any bonds or notes.

(r) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from assessments, revenues, or assets pledged or assigned to the payment of the principal of and the interest on bonds and notes or from any other funds available to the commission.

(s) Notwithstanding the restrictions of any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds or notes issued under this chapter.

(t) All bonds or notes issued under this chapter are issued by a body corporate and politic of this state, but not a state agency, and for an essential public and government purpose and the bonds and

notes, the interest thereon, the proceeds received by a holder from the sale of the bonds or notes to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, and proceeds received at maturity, and the receipt of the interest and proceeds are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

As added by P.L.272-1987, SEC.6. Amended by P.L.21-1990, SEC.52; P.L.254-1997(ss), SEC.25; P.L.235-2005, SEC.203.

IC 27-1-29-27.1

Repealed

(Repealed by P.L.177-2011, SEC.5.)

IC 27-1-29-28

Actions affecting fund warranted by declining membership or financial conditions

Sec. 28. (a) As used in this section, "fund" means the political subdivision risk management fund established by section 10 of this chapter.

(b) Notwithstanding any other provision of this chapter, the commission:

- (1) with the approval of the insurance commissioner; and
- (2) upon a determination by the commission that:
 - (A) membership in the fund is declining; and
 - (B) financial conditions warrant the action;

is authorized to take action under subsection (c).

(c) Under the circumstances set forth in subsection (b), the commission may do the following with respect to the fund:

- (1) Prevent any political subdivision that is not already a member of the fund from becoming a member.
- (2) Decline to renew the membership of the political subdivisions that are members of the fund.
- (3) When the membership of the last member has expired, cease the operation of the fund, except for:
 - (A) the payment of liabilities of former members of the fund; and
 - (B) the collection of assessments from former members of the fund, if any are due;

in accordance with this chapter and rules adopted by the commission.

- (4) Allow or cause a partial reduction or complete depletion of the balance of the fund through:

- (A) the payment of liabilities of former members of the fund; and
- (B) at the discretion of the commission, and with the approval of the commissioner, the pro rata return to former members of assessments paid by former members of the fund;

in accordance with this chapter and rules adopted by the

commission.

(d) After any or all of the actions authorized by subsection (c), the commission, with the approval of the insurance commissioner, may resume using the fund to pay the liabilities of members of the fund under this chapter.

As added by P.L.103-1998, SEC.1.