



# HOUSE BILL No. 6126

September 25, 1996, Introduced by Rep. Law and referred to the Committee on Insurance.

A bill to amend sections 5, 7, 7a, 8, and 12a of Act No. 35 of the Public Acts of 1951, entitled as amended

"An act to authorize intergovernmental contracts between municipal corporations; to authorize any municipal corporation to contract with any person or any municipal corporation to furnish any lawful municipal service to property outside the corporate limits of the first municipal corporation for a consideration; to prescribe certain penalties; to authorize contracts between municipal corporations and with certain nonprofit public transportation corporations to form group self-insurance pools; and to prescribe conditions for the performance of those contracts,"

sections 5, 7, and 8 as amended and sections 7a and 12a as added by Act No. 36 of the Public Acts of 1988, being sections 124.5, 124.7, 124.7a, 124.8, and 124.12a of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 5, 7, 7a, 8, and 12a of Act No. 35 of  
2 the Public Acts of 1951, sections 5, 7, and 8 as amended and  
3 sections 7a and 12a as added by Act No. 36 of the Public Acts of

1 1988, being sections 124.5, 124.7, 124.7a, 124.8, and 124.12a of  
2 the Michigan Compiled Laws, are amended to read as follows:

3       Sec. 5. (1) Notwithstanding any other provision of law to  
4 the contrary, any 2 or more municipal corporations, by intergov-  
5 ernmental contract, may form a group self-insurance pool to pro-  
6 vide for joint or cooperative action relative to their financial  
7 and administrative resources for the purpose of providing to the  
8 participating municipal corporations risk management and coverage  
9 for pool members and employees of pool members, for acts or omis-  
10 sions arising out of the scope of their employment, including any  
11 or all of the following:

12       (a) Casualty insurance, including general and professional  
13 liability coverage.

14       (b) Property insurance, including marine insurance and  
15 inland navigation and transportation insurance coverage.

16       (c) Automobile insurance, including motor vehicle liability  
17 insurance coverage and security for motor vehicles owned or oper-  
18 ated, as required by section 3101 of the insurance code of 1956,  
19 Act No. 218 of the Public Acts of 1956, ~~as amended,~~ being sec-  
20 tion 500.3101 of the Michigan Compiled Laws, and protection  
21 against other liability and loss associated with the ownership of  
22 motor vehicles.

23       (d) Surety and fidelity insurance coverage.

24       (e) Umbrella and excess insurance coverages.

25       (2) A group self-insurance pool may not provide for hospi-  
26 tal, medical, surgical, or dental benefits to the employees of  
27 the member municipalities in the pool except when such benefits

1 arise from the obligations and responsibilities of the pool in  
2 providing ~~automobile insurance coverage, including motor vehicle~~  
3 ~~liability insurance coverage and security for motor vehicles~~  
4 ~~owned or operated, as required by section 3101 of the insurance~~  
5 ~~code of 1956, Act No. 218 of the Public Acts of 1956, as amended,~~  
6 ~~and protection against other liability and loss associated with~~  
7 ~~the ownership of motor vehicles.~~ COVERAGE DESCRIBED IN SUBSEC-  
8 TION (1)(C).

9 (3) A group self-insurance pool may assume, cede, and sell  
10 risk for coverages set forth in subsection (1). EXCESS INSURANCE  
11 OR REINSURANCE OBTAINED BY A GROUP SELF-INSURANCE POOL SHALL BE  
12 FROM AN INSURER AUTHORIZED IN THIS STATE, AN ELIGIBLE UNAUTHO-  
13 RIZED INSURER, OR A GROUP SELF-INSURANCE POOL FORMED UNDER THIS  
14 ACT. If a group self-insurance pool obtains reinsurance, the  
15 reinsurance contract shall be made available to the commissioner  
16 upon request. If the reinsurance contract is not available to  
17 the group self-insurance pool, the group self-insurance pool  
18 shall provide to the commissioner such written documentation of  
19 coverage as is requested by the commissioner.

20 (4) A group self-insurance pool, for the purposes of carry-  
21 ing on the business of the group self-insurance pool whether or  
22 not a body corporate, ~~shall have the power to~~ MAY sue and be  
23 sued, ~~to~~ make contracts, ~~to~~ hold and dispose of real and  
24 personal property, ~~and to~~ borrow money, contract debts, and  
25 pledge assets in the name of the group self-insurance pool.

26 (5) In addition to any other powers granted by this act, the  
27 power to enter into intergovernmental contracts under this

1 section specifically includes the power to establish the pool as  
2 a separate legal or administrative entity for purposes of effec-  
3 tuating group self-insurance pool agreements.

4 (6) The legislature ~~hereby~~ finds ~~and determines~~ that  
5 insurance protection is essential to the proper functioning of  
6 municipal corporations; that the resources of municipal corpora-  
7 tions are burdened by the securing of such protection through  
8 ~~standards~~ STANDARD carriers; that proper risk management  
9 requires the spreading of risk so as to minimize fluctuation in  
10 insurance needs; and that, therefore, all contributions of finan-  
11 cial and administrative resources made by a municipal corporation  
12 pursuant to an intergovernmental contract as authorized under  
13 this act are made for a public and governmental purpose, and that  
14 such contributions benefit each contributing municipal  
15 corporation.

16 (7) Two or more municipal corporations shall not form a  
17 group self-insurance pool to provide the coverages described in  
18 subsection (1) other than pursuant to sections 5 to 12b.

19 Sec. 7. ~~Any~~ AN intergovernmental contract ~~entered into~~  
20 under section 5 ~~for the purpose of establishing~~ TO ESTABLISH a  
21 group self-insurance pool shall provide:

22 (a) A financial plan setting forth in general terms:

23 (i) The insurance coverages to be offered by the group  
24 self-insurance pool, applicable deductible levels, and the maxi-  
25 mum level of claims ~~which~~ THAT the pool will self-insure.

26 (ii) Subject to section 7a, the amount of cash reserves to  
27 be set aside for the payment of claims.

1 (iii) The amount of insurance to be purchased by the pool to  
2 provide coverage over and above the claims which are not to be  
3 satisfied directly from the pool's resources.

4 (iv) Subject to section 7a, the amount of aggregate excess  
5 insurance coverage to be maintained or the amount of the deposit  
6 of unimpaired surplus to be maintained with the state treasurer,  
7 which aggregate excess insurance or deposit shall be used ~~in the~~  
8 ~~event that~~ IF the group self-insurance pool's resources are  
9 exhausted in a given fiscal period. The aggregate excess insur-  
10 ance or deposit or combination of aggregate excess insurance and  
11 deposit shall be, at a minimum, in the amount of \$5,000,000.00  
12 unless the commissioner determines a lesser amount ~~of aggregate~~  
13 ~~excess insurance would be~~ IS adequate.

14 (b) A plan of management which provides for all of the  
15 following:

16 (i) The means of establishing the governing authority of the  
17 pool.

18 (ii) The responsibility of the governing authority with  
19 regard to fixing contributions to the pool, maintaining reserves,  
20 levying and collecting assessments for deficiencies, disposing of  
21 surpluses, and administering the pool in the event of termination  
22 or insolvency.

23 (iii) The basis upon which new members may be admitted to,  
24 and existing members may leave, the pool.

25 (iv) The identification of funds and reserves by exposure  
26 areas.

1 (v) Other provisions necessary or desirable for the  
2 operation of the pool.

3 (c) For election by pool members of a governing authority,  
4 which shall be a board of directors for the pool, a majority of  
5 whom shall be elected or appointed officers of pool members.

6 Sec. 7a. (1) When 2 or more municipal corporations ~~have~~  
7 ~~formed~~ FORM a group self-insurance pool by an intergovernmental  
8 contract ~~pursuant to~~ UNDER section 5, the group self-insurance  
9 pool shall immediately submit a copy of the intergovernmental  
10 contract to the commissioner of insurance. The commissioner of  
11 insurance shall review it for compliance with this act.

12 (2) A copy of each coverage document form issued by the pool  
13 shall be filed with the commissioner of insurance.

14 (3) EACH GROUP SELF-INSURANCE POOL SHALL MAINTAIN ASSETS  
15 UNDER SECTION 11(1) OF AT LEAST \$50,000.00 IN EXCESS OF  
16 LIABILITIES.

17 (4) ~~(3)~~ Each group self-insurance pool shall maintain  
18 aggregate excess insurance or a deposit with the state treasurer  
19 of unimpaired surplus. ~~which~~ THE aggregate excess insurance or  
20 deposit shall be used ~~in the event that~~ IF the pool's resources  
21 are exhausted in a given fiscal period. The aggregate excess  
22 insurance or deposit, or combination of aggregate excess insur-  
23 ance and deposit shall be, at a minimum, in the amount of  
24 \$5,000,000.00 unless the commissioner determines a lesser amount  
25 ~~of aggregate excess insurance would be~~ IS adequate. A copy of  
26 the aggregate excess insurance contract obtained by a group  
27 self-insurance pool pursuant to this section shall be filed with

1 the commissioner of insurance. ~~who~~ THE COMMISSIONER OF  
2 INSURANCE shall review ~~it~~ THE CONTRACT for compliance with this  
3 act.

4 (5) A LOSS FUND ESTABLISHED BY A GROUP SELF-INSURANCE POOL  
5 FOR THE PAYMENT OF THE POOL'S PER LOSS AND AGGREGATE OBLIGATIONS  
6 SHALL BE FULLY FUNDED.

7 (6) ~~(4)~~ A group self-insurance pool shall set aside cash  
8 reserves that are adequate for the payment of claims.

9 (7) THE MEMBERS OF A GROUP SELF-INSURANCE POOL ARE LIABLE TO  
10 THE POOL FOR ANY SHORTFALL IN THE ASSETS AVAILABLE TO PAY CLAIMS  
11 UNTIL THE ATTACHMENT POINT OF ANY APPLICABLE EXCESS INSURANCE OR  
12 REINSURANCE IS REACHED.

13 Sec. 8. (1) Each group self-insurance pool created in this  
14 state shall file with the members of the pool AND WITH THE COM-  
15 MISSIONER OF INSURANCE, within ~~+20~~ 90 days after the end of the  
16 pool's fiscal year, OR AT SUCH OTHER TIMES AS REQUIRED BY THE  
17 COMMISSIONER, A FINANCIAL REPORT, IN A FORMAT PRESCRIBED BY THE  
18 COMMISSIONER, INCLUDING audited financial statements certified by  
19 an independent certified public accountant. ~~Two additional~~  
20 ~~copies of the audited financial statements shall be filed with~~  
21 ~~the commissioner of insurance. The commissioner of insurance~~  
22 ~~shall forward a copy of the audited financial statement to the~~  
23 ~~state treasurer.~~

24 (2) If a group self-insurance pool fails to provide for the  
25 audited financial statements required by subsection (1), the com-  
26 missioner of insurance shall perform the audit and the group  
27 self-insurance pool shall reimburse the commissioner of insurance

1 for the cost of the audit. The commissioner of insurance shall  
2 prescribe a uniform reporting format for the preparation of the  
3 audited financial statements and shall also devise a uniform  
4 accounting system to be used by group self-insurance pools. The  
5 COMMISSIONER MAY REVIEW working papers of the certified public  
6 accountant and other records pertaining to the preparation of the  
7 audited financial statements. ~~may be reviewed by the commis-~~  
8 ~~sioner of insurance.~~

9 (3) Each group self-insurance pool created in this state  
10 shall file with the commissioner of insurance, within ~~+20-~~ 90  
11 days after the end of the pool's fiscal year, a certification by  
12 an independent actuary that the reserves set aside pursuant to  
13 section 7a are adequate for the payment of claims.

14 (4) A GROUP SELF-INSURANCE POOL THAT FAILS TO FILE A FINAN-  
15 CIAL REPORT OR AN ACTUARIAL CERTIFICATION REQUIRED BY THIS SEC-  
16 TION OR FAILS TO REPLY WITHIN 30 DAYS TO AN INQUIRY OF THE COM-  
17 MISSIONER IS LIABLE FOR A CIVIL FINE OF \$25.00 FOR EVERY DAY THAT  
18 THE GROUP SELF-INSURANCE POOL FAILS TO FILE THE REPORT OR CERTI-  
19 FICATION OR TO RESPOND TO THE INQUIRY.

20 (5) ~~(4)~~ The commissioner of insurance shall perform exami-  
21 nations of each group self-insurance pool created in this state  
22 to assure that the pools fulfill all of the requirements of this  
23 act and are operating in accordance with law.

24 (6) ~~(5)~~ If a group self-insurance pool fails to ~~maintain~~  
25 ~~compliance-~~ COMPLY with the financial requirements of this act,  
26 the commissioner of insurance shall notify the pool ~~and the~~  
27 ~~state treasurer-~~ that the pool has failed to ~~maintain~~

1 ~~compliance~~ COMPLY with the financial requirements of this act.  
2 Within 30 business days after notification by the commissioner of  
3 noncompliance with the financial requirements of this act, the  
4 pool shall file a plan to restore compliance. Failure of the  
5 pool to file a plan ~~shall create~~ CREATES a presumption that the  
6 pool does not meet the financial requirements of this act. The  
7 commissioner, upon written request by the pool, may grant a  
8 period of time within which to restore compliance. The period of  
9 time may be granted only if the commissioner is satisfied the  
10 pool is safe, reliable, and entitled to public confidence; is  
11 satisfied the pool would suffer a material financial loss from an  
12 immediate forced conversion of its assets; and approves the plan  
13 filed by the pool for restoring compliance within the time  
14 granted. If the plan is not approved by the commissioner, or if  
15 the plan is approved, and, at the end of 1 year the pool still  
16 does not comply with the financial requirements of this act, or  
17 if the pool does not file a plan to restore compliance, the com-  
18 missioner may grant additional time to comply, or the commis-  
19 sioner may suspend, revoke, or limit the right of the pool to do  
20 business in this state.

21       Sec. 12a. (1) When the commissioner has probable cause to  
22 believe that a group self-insurance pool or other person is vio-  
23 lating, or has violated any of the provisions ~~provided~~ in sec-  
24 tions 5 to 12, ~~he or she~~ THE COMMISSIONER shall give written  
25 notice to the pool or person, pursuant to the administrative pro-  
26 cedures act of 1969, Act No. 306 of the Public Acts of 1969,  
27 being sections 24.201 to 24.328 of the Michigan Compiled Laws,

1 setting forth the general nature of the complaint against the  
2 pool or person and the proceedings contemplated under this  
3 section. Before the issuance of a notice of hearing, the staff  
4 of the bureau of insurance responsible for the matters which  
5 would be at issue in the hearing shall give the pool or person an  
6 opportunity to confer and discuss the possible complaint and pro-  
7 ceedings in person with the commissioner or a representative of  
8 the commissioner, and the matter may be disposed of summarily  
9 upon agreement of the parties. This subsection ~~shall not be~~  
10 ~~construed to~~ DOES NOT create or diminish any right of a person  
11 to bring an action for damages.

12 (2) A hearing held pursuant to subsection (1) shall be held  
13 pursuant to ~~the administrative procedures act of 1969,~~ Act  
14 No. 306 of the Public Acts of 1969. If, after the hearing, the  
15 commissioner determines that the pool or person is violating, or  
16 has violated, any of the provisions provided in sections 5 to 12,  
17 the commissioner shall reduce his or her findings and decision to  
18 writing, and shall issue and cause to be served upon the pool or  
19 person a copy of the findings and an order requiring the pool or  
20 person to ~~cease and desist from engaging in the prohibited~~  
21 ~~activity, and the~~ COMPLY WITH THE APPLICABLE PROVISIONS OF SEC-  
22 TIONS 5 TO 12. THE commissioner may ALSO order any of the  
23 following:

24 (a) Payment of a monetary fine of not more than \$500.00 for  
25 each violation but not to exceed an aggregate fine of \$5,000.00.  
26 ~~, unless~~ HOWEVER, IF the pool or person knew or reasonably  
27 should have known it was in violation of this act, ~~in which~~

1 ~~case~~ the fine shall not be more than \$2,500.00 for each  
2 violation and shall not exceed an aggregate fine of \$25,000.00  
3 for all violations committed in a 6-month period. THIS SUBDIVI-  
4 SION DOES NOT APPLY TO A VIOLATION DESCRIBED IN SECTION 8(4).

5 (b) Suspension, limitation, or revocation of the pool's  
6 right to continue to do business in this state, including, but  
7 not limited to, the liquidation and receivership of the pool in  
8 the same manner as under chapter ~~78~~ 81 of the insurance code of  
9 1956, Act No. 218 of the Public Acts of 1956, being sections  
10 ~~500.7800 to 500.7868~~ 500.8101 TO 500.8160 of the Michigan  
11 Compiled Laws. The commissioner of insurance has the same  
12 authority to act as custodian or receiver of a group  
13 self-insurance pool as the commissioner has to act under chapter  
14 ~~78~~ 81 of ~~the insurance code of 1956,~~ Act No. 218 of the  
15 Public Acts of 1956. FOR A VIOLATION DESCRIBED IN SECTION 8(6),  
16 THIS SUBDIVISION IS SUBJECT TO THE REQUIREMENTS OF SECTION 8(6).

17 (c) Restitution or refund to an aggrieved person.