



SENATE BILL No. 1164

September 18, 1996, Introduced by Senator GOUGEON and referred to the Committee on Financial Services.

A bill to amend sections 5, 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 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, 124.7a, 124.8, and 124.12a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5, 7a, 8, and 12a of Act No. 35 of the
2 Public Acts of 1951, sections 5 and 8 as amended and sections 7a
3 and 12a as added by Act No. 36 of the Public Acts of 1988, being

1 sections 124.5, 124.7a, 124.8, and 124.12a of the Michigan
2 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~~ SHALL not provide for
26 hospital, medical, surgical, or dental benefits to the employees
27 of the member municipalities in the pool except ~~when such~~ IF

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

8 (3) A group self-insurance pool may assume, cede, and sell
9 risk for coverages set forth in subsection (1). EXCESS INSURANCE
10 OBTAINED BY A GROUP SELF-INSURANCE POOL SHALL BE FROM AN INSURER
11 AUTHORIZED IN THIS STATE, AN ELIGIBLE UNAUTHORIZED INSURER, OR A
12 GROUP SELF-INSURANCE POOL ORGANIZED UNDER THIS ACT. If a group
13 self-insurance pool obtains ~~reinsurance~~ EXCESS INSURANCE, the
14 ~~reinsurance~~ EXCESS INSURANCE contract shall be made available
15 to the commissioner upon request. If the ~~reinsurance~~ EXCESS
16 INSURANCE contract is not available to the group self-insurance
17 pool, the group self-insurance pool shall provide to the commis-
18 sioner such written documentation of coverage as is requested by
19 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 sue and be sued; to
23 make contracts; to hold and dispose of real and personal proper-
24 ty; and to borrow money, contract debts, and pledge assets in the
25 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 insur-
5 ance protection is essential to the proper functioning of munici-
6 pal corporations; that the resources of municipal corporations
7 are burdened by the securing of such protection through standards
8 carriers; that proper risk management requires the spreading of
9 risk so as to minimize fluctuation in insurance needs; and that,
10 therefore, all contributions of financial and administrative
11 resources made by a municipal corporation pursuant to an inter-
12 governmental contract as authorized under this act are made for a
13 public and governmental purpose, and that such contributions ben-
14 efit each contributing municipal corporation.

15 (7) Two or more municipal corporations shall not form a
16 group self-insurance pool to provide the coverages described in
17 subsection (1) other than pursuant to THIS SECTION AND sections
18 ~~5~~ 6 to 12b.

19 Sec. 7a. (1) When 2 or more municipal corporations have
20 formed a group self-insurance pool by an intergovernmental con-
21 tract pursuant to section 5, the group self-insurance pool shall
22 immediately submit a copy of the intergovernmental contract to
23 the commissioner of insurance. The commissioner of insurance
24 shall review it for compliance with this act.

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

1 (3) EACH GROUP SELF-INSURANCE POOL SHALL MAINTAIN MEMBERS'
2 EQUITY, AT A MINIMUM, IN AN AMOUNT OF \$50,000.00. FOR PURPOSES
3 OF THIS SUBSECTION, "MEMBERS' EQUITY" IS DEFINED AS ASSETS UNDER
4 SECTION 11(1) MINUS LIABILITIES.

5 (4) ~~(3)~~ Each group self-insurance pool shall maintain
6 aggregate excess insurance or a deposit with the state treasurer
7 of unimpaired surplus which aggregate excess insurance or deposit
8 shall be used in the event that the 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 adequate. A copy of the aggregate
14 excess insurance contract obtained by a group self-insurance pool
15 pursuant to this section shall be filed with the commissioner of
16 insurance who shall review it for compliance with this act.

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

20 (6) ~~(4)~~ A group self-insurance pool shall set aside cash
21 reserves that are adequate for the payment of claims.

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

26 Sec. 8. (1) Each group self-insurance pool created in this
27 state shall file with the members of the pool AND WITH THE

1 COMMISSIONER OF INSURANCE, within ~~+20-~~ 90 days after the end of
2 the pool's fiscal year, OR AT SUCH OTHER TIMES AS REQUIRED BY THE
3 COMMISSIONER, A FINANCIAL REPORT, IN A FORMAT PRESCRIBED BY THE
4 COMMISSIONER, WHICH INCLUDES audited financial statements certi-
5 fied by an independent certified public accountant. ~~Two addi-~~
6 ~~tional copies of the audited financial statements shall be filed~~
7 ~~with the commissioner of insurance. The commissioner of insur-~~
8 ~~ance shall forward a copy of the audited financial statement to~~
9 ~~the state treasurer.~~

10 (2) If a group self-insurance pool fails to provide for the
11 audited financial statements required by subsection (1), the com-
12 missioner of insurance shall perform the audit and the group
13 self-insurance pool shall reimburse the commissioner of insurance
14 for the cost of the audit. The commissioner of insurance shall
15 prescribe a uniform reporting format for the preparation of the
16 audited financial statements and shall also devise a uniform
17 accounting system to be used by group self-insurance pools. The
18 working papers of the certified public accountant and other
19 records pertaining to the preparation of the audited financial
20 statements may be reviewed by the commissioner of insurance.

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

26 (4) EACH GROUP SELF-INSURANCE POOL FAILING TO FILE A
27 FINANCIAL REPORT OR AN ACTUARIAL CERTIFICATION REQUIRED BY THIS

1 SECTION OR FAILING TO REPLY WITHIN 30 DAYS TO AN INQUIRY OF THE
2 COMMISSIONER CONCERNING THAT FAILURE IS SUBJECT TO A CIVIL FINE
3 OF \$25.00 FOR EVERY DAY THAT THE GROUP SELF-INSURANCE POOL FAILS
4 TO EITHER FILE THE REPORT OR CERTIFICATION OR RESPOND TO THE
5 INQUIRY.

6 (5) ~~(4)~~ The commissioner of insurance shall perform exami-
7 nations of each group self-insurance pool created in this state
8 to assure that the pools fulfill all of the requirements of this
9 act and are operating in accordance with law.

10 (6) ~~(5)~~ If a group self-insurance pool fails to maintain
11 compliance with the financial requirements of this act, the com-
12 missioner of insurance shall notify the pool ~~and the state~~
13 ~~treasurer~~ that the pool has failed to maintain compliance with
14 the financial requirements of this act. Within 30 business days
15 after notification by the commissioner of noncompliance with the
16 financial requirements of this act, the pool shall file a plan to
17 restore compliance. Failure of the pool to file a plan shall
18 create a presumption that the pool does not meet the financial
19 requirements of this act. The commissioner, upon written request
20 by the pool, may grant a period of time within which to restore
21 compliance. The period of time may be granted only if the com-
22 missioner is satisfied the pool is safe, reliable, and entitled
23 to public confidence; is satisfied the pool would suffer a mate-
24 rial financial loss from an immediate forced conversion of its
25 assets; and approves the plan filed by the pool for restoring
26 compliance within the time granted. If the plan is not approved
27 by the commissioner, or if the plan is approved, and, at the end

1 of 1 year the pool still does not comply with the financial
2 requirements of this act, or if the pool does not file a plan to
3 restore compliance, the commissioner may grant additional time to
4 comply, or the commissioner may suspend, revoke, or limit the
5 right of the pool to do business in this state.

6 Sec. 12a. (1) When the commissioner has probable cause to
7 believe that a group self-insurance pool or other person is vio-
8 lating, or has violated any of the provisions provided in sec-
9 tions 5 to 12, he or she shall give written notice to the pool or
10 person, pursuant to the administrative procedures act of 1969,
11 Act No. 306 of the Public Acts of 1969, being sections 24.201 to
12 24.328 of the Michigan Compiled Laws, setting forth the general
13 nature of the complaint against the pool or person and the pro-
14 ceedings contemplated under this section. Before the issuance of
15 a notice of hearing, the staff of the bureau of insurance respon-
16 sible for the matters ~~which~~ THAT would be at issue in the hear-
17 ing shall give the pool or person an opportunity to confer and
18 discuss the possible complaint and proceedings in person with the
19 commissioner or a representative of the commissioner, and the
20 matter may be disposed of summarily upon agreement of the
21 parties. This subsection shall not be construed to create or
22 diminish any right of a person to bring an action for damages.

23 (2) A hearing held pursuant to subsection (1) shall be held
24 pursuant to ~~the administrative procedures act of 1969,~~ Act
25 No. 306 of the Public Acts of 1969. If, after the hearing, the
26 commissioner determines that the pool or person is violating, or
27 has violated, any of the provisions provided in sections 5 to 12,

1 the commissioner shall reduce his or her findings and decision to
2 writing, and shall issue and cause to be served upon the pool or
3 person a copy of the findings and an order requiring the pool or
4 person to cease and desist from engaging in the prohibited activ-
5 ity, and the commissioner may order any of the following:

6 (a) Payment of a monetary fine of not more than \$500.00 for
7 each violation but not to exceed an aggregate fine of \$5,000.00,
8 unless the pool or person knew or reasonably should have known it
9 was in violation of this act, in which case the fine shall not be
10 more than \$2,500.00 for each violation and shall not exceed an
11 aggregate fine of \$25,000.00 for all violations committed in a
12 6-month period.

13 (b) Suspension, limitation, or revocation of the pool's
14 right to continue to do business in this state, including, but
15 not limited to, the liquidation and receivership of the pool in
16 the same manner as under chapter ~~78~~ 81 of the insurance code of
17 1956, Act No. 218 of the Public Acts of 1956, being sections
18 ~~500.7800 to 500.7868~~ 500.8101 TO 500.8160 of the Michigan
19 Compiled Laws. The commissioner of insurance has the same
20 authority to act as custodian or receiver of a group
21 self-insurance pool as the commissioner has to act under chapter
22 ~~78~~ 81 of ~~the insurance code of 1956,~~ Act No. 218 of the
23 Public Acts of 1956.

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