

HOUSE BILL No. 5179

September 14, 2005, Introduced by Reps. Taub, Marleau, Elsenheimer, Amos, Garfield, Hune, Gaffney, Sheen, David Law, Vander Veen, Stakoe, Hildenbrand, Nofs, Drolet, Hummel, Emmons, Shaffer and Pavlov and referred to the Committee on Insurance.

A bill to amend 1951 PA 35, entitled

"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,"

by amending the title and sections 1, 5, 7, 7a, 10, and 12 (MCL 124.1, 124.5, 124.7, 124.7a, 124.10, and 124.12), the title and section 7 as amended and section 7a as added by 1988 PA 36, section 1 as amended by 1996 PA 289, section 5 as amended by 1999 PA 83, and sections 10 and 12 as added by 1982 PA 138.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to authorize intergovernmental contracts between
3 municipal corporations; to authorize any municipal corporation to
4 contract with any person or any municipal corporation to furnish
5 any lawful municipal service to property outside the corporate
6 limits of the first municipal corporation for a consideration; to
7 prescribe certain penalties; to authorize contracts ~~between~~ **AMONG**
8 municipal corporations, ~~and with~~ certain nonprofit public
9 transportation corporations, **AND NONPROFIT CORPORATIONS** to form
10 group self-insurance pools; and to prescribe conditions for the
11 performance of those contracts.

12 Sec. 1. As used in this act:

13 (a) "Municipal corporation" means a county, charter county,
14 county road commission, township, charter township, city, village,
15 school district, intermediate school district, community college
16 district, metropolitan district, court district, **OR** public
17 authority, ~~or A drainage district as defined in~~ **ESTABLISHED**
18 **UNDER** the drain code of 1956, ~~Act No. 40 of the Public Acts of~~
19 ~~1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws~~
20 **1956 PA 40, MCL 280.1 TO 280.630**, or any other local governmental
21 authority or local agency with power to enter into contractual
22 undertakings. For purposes of sections 5 to 12b, "municipal
23 corporation" includes a public transportation corporation.

24 (B) **"NONPROFIT CORPORATION" MEANS THAT TERM AS DEFINED IN**
25 **SECTION 108 OF THE NONPROFIT CORPORATION ACT, 1982 PA 162, MCL**
26 **450.2108.**

27 (C) **"POOL MEMBER" MEANS A MUNICIPAL CORPORATION OR NONPROFIT**

1 CORPORATION THAT IS A PARTICIPANT IN A GROUP SELF-INSURANCE POOL
2 FORMED UNDER SECTION 5.

3 (D) ~~-(b)-~~ "Public transportation corporation" means a
4 nonprofit corporation ~~organized pursuant to the nonprofit~~
5 ~~corporation act, Act No. 162 of the Public Acts of 1982, being~~
6 ~~sections 450.2101 to 450.3192 of the Michigan Compiled Laws,~~ to
7 which 1 of the following applies:

8 (i) The primary purpose of the nonprofit corporation is
9 providing public transportation services.

10 (ii) The nonprofit corporation receives funding from the
11 specialized services assistance program under section 10e of ~~Act~~
12 ~~No. 51 of the Public Acts of 1951, being section 247.660e of the~~
13 ~~Michigan Compiled Laws~~ **1951 PA 51, MCL 247.660E.**

14 (E) ~~-(e)-~~ "Public transportation" means that term as defined
15 in section 10c of ~~Act No. 51 of the Public Acts of 1951, being~~
16 ~~section 247.660c of the Michigan Compiled Laws~~ **1951 PA 51, MCL**
17 **247.660C.**

18 Sec. 5. (1) Notwithstanding any other provision of law to the
19 contrary, any 2 or more municipal corporations, by
20 intergovernmental contract, **ANY 2 OR MORE NONPROFIT CORPORATIONS BY**
21 **CONTRACT, OR ANY COMBINATION OF 2 OR MORE MUNICIPAL CORPORATIONS**
22 **AND NONPROFIT CORPORATIONS BY CONTRACT** may form a group self-
23 insurance pool to provide for joint or cooperative action relative
24 to their financial and administrative resources for the purpose of
25 providing ~~to the participating municipal corporations~~ risk
26 management and coverage for pool members and employees of pool
27 members, for acts or omissions arising out of the scope of their

1 employment, including any or all of the following:

2 (a) Casualty insurance, including general and professional
3 liability coverage.

4 (b) Property insurance, including marine insurance and inland
5 navigation and transportation insurance coverage.

6 (c) Automobile insurance, including motor vehicle liability
7 insurance coverage and security for motor vehicles owned or
8 operated, as required by section 3101 of the insurance code of
9 1956, 1956 PA 218, MCL 500.3101, and protection against other
10 liability and loss associated with the ownership of motor vehicles.

11 (d) Surety and fidelity insurance coverage.

12 (e) Umbrella and excess insurance coverages.

13 (2) Except as otherwise provided in this subsection, a group
14 self-insurance pool may not provide for hospital, medical,
15 surgical, or dental benefits to the employees of the ~~member~~
16 ~~municipalities in the~~ pool **MEMBERS** except when those benefits
17 arise from the obligations and responsibilities of the pool in
18 providing automobile insurance coverage, including motor vehicle
19 liability insurance coverage and security for motor vehicles owned
20 or operated, as required by section 3101 of the insurance code of
21 1956, 1956 PA 218, MCL 500.3101, and protection against other
22 liability and loss associated with the ownership of motor vehicles.
23 This subsection does not preclude municipal corporations from
24 forming a multiple employer welfare arrangement under chapter 70 of
25 the insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090,
26 for hospital, medical, surgical, or dental benefits.

27 (3) A group self-insurance pool may assume, cede, and sell

1 risk for coverages set forth in subsection (1). If a group self-
2 insurance pool obtains reinsurance, the reinsurance contract shall
3 be made available to the commissioner upon request. If the
4 reinsurance contract is not available to the group self-insurance
5 pool, the group self-insurance pool shall provide the commissioner
6 with written documentation of coverage as is requested by the
7 commissioner.

8 (4) A group self-insurance pool, for the purposes of carrying
9 on the business of the group self-insurance pool whether or not a
10 body corporate, shall have the power to sue and be sued; to make
11 contracts; to hold and dispose of real and personal property; and
12 to borrow money, contract debts, and pledge assets in the name of
13 the group self-insurance pool.

14 (5) In addition to any other powers granted by this act, the
15 power to enter into intergovernmental contracts **AND OTHER CONTRACTS**
16 under this section specifically includes the power to establish
17 ~~the~~ **A GROUP SELF-INSURANCE** pool as a separate legal or
18 administrative entity for purposes of effectuating group self-
19 insurance pool agreements.

20 (6) The legislature ~~hereby~~ finds and determines that
21 insurance protection is essential to the proper functioning of
22 municipal corporations; that the resources of municipal
23 corporations are burdened by the securing of insurance protection
24 through standards carriers; that proper risk management requires
25 spreading risk to minimize fluctuation in insurance needs; and
26 that, therefore, all contributions of financial and administrative
27 resources made by a municipal corporation pursuant to an

1 intergovernmental contract authorized under this act are made for a
2 public and governmental purpose, and that those contributions
3 benefit each contributing municipal corporation.

4 (7) ~~Two or more municipal~~ **MUNICIPAL** corporations **AND**
5 **NONPROFIT CORPORATIONS** shall not form a group self-insurance pool
6 to provide the coverages described in subsection (1) other than
7 pursuant to sections 5 to 12b.

8 Sec. 7. Any intergovernmental contract **OR OTHER CONTRACT**
9 entered into under section 5 for the purpose of establishing a
10 group self-insurance pool shall provide:

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

12 (i) The insurance coverages to be offered by the group self-
13 insurance pool, applicable deductible levels, and the maximum level
14 of claims which the pool will self-insure.

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

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

20 (iv) Subject to section 7a, the amount of aggregate excess
21 insurance coverage to be maintained or the amount of the deposit of
22 unimpaired surplus to be maintained with the state treasurer, which
23 aggregate excess insurance or deposit shall be used in the event
24 that the group self-insurance pool's resources are exhausted in a
25 given fiscal period. The aggregate excess insurance or deposit or
26 combination of aggregate excess insurance and deposit shall be, at
27 a minimum, in the amount of \$5,000,000.00 unless the commissioner

1 determines a lesser amount of aggregate excess insurance would be
2 adequate.

3 (b) A plan of management which provides for all of the
4 following:

5 (i) The means of establishing the governing authority of the
6 pool.

7 (ii) The responsibility of the governing authority with regard
8 to fixing contributions to the pool, maintaining reserves, levying
9 and collecting assessments for deficiencies, disposing of
10 surpluses, and administering the pool in the event of termination
11 or insolvency.

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

14 (iv) The identification of funds and reserves by exposure
15 areas.

16 (v) Other provisions necessary or desirable for the operation
17 of the pool.

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

21 Sec. 7a. (1) When ~~2 or more municipal corporations have~~
22 ~~formed~~ a group self-insurance pool ~~by an intergovernmental~~
23 ~~contract~~ **IS FORMED** pursuant to section 5, the group self-insurance
24 pool shall immediately submit a copy of the intergovernmental
25 contract **OR OTHER CONTRACT ESTABLISHING THE POOL** to the
26 commissioner of insurance. The commissioner of insurance shall
27 review it for compliance with this act.

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

3 (3) Each group self-insurance pool shall maintain aggregate
4 excess insurance or a deposit with the state treasurer of
5 unimpaired surplus which aggregate excess insurance or deposit
6 shall be used in the event that the pool's resources are exhausted
7 in a given fiscal period. The aggregate excess insurance or
8 deposit, or combination of aggregate excess insurance and deposit
9 shall be, at a minimum, in the amount of \$5,000,000.00 unless the
10 commissioner determines a lesser amount of aggregate excess
11 insurance would be adequate. ~~A~~ **THE POOL SHALL FILE A** copy of the
12 aggregate excess insurance contract obtained by ~~a group self-~~
13 ~~insurance~~ **THE** pool ~~pursuant to~~ **UNDER** this section ~~shall be~~
14 ~~filed~~ with the commissioner of insurance who shall review it for
15 compliance with this act.

16 (4) A group self-insurance pool shall set aside cash reserves
17 that are adequate for the payment of claims.

18 Sec. 10. The provisions of any statute or charter requiring a
19 public official to post bond or obtain a surety bond, the premium
20 on which may lawfully be paid by a public agency of this state, may
21 be satisfied with surety or fidelity insurance coverage furnished
22 by a group self-insurance pool organized under this act, including
23 any deductible amount or other portion self-insured by the public
24 agency itself **IF THE POOL INCLUDES 1 OR MORE MUNICIPAL CORPORATIONS**
25 **AMONG ITS MEMBERS.**

26 Sec. 12. (1) Information regarding that portion of the funds
27 or liability reserve ~~of a pool~~ established for purposes of

1 satisfying a specific claim or cause of action ~~shall be~~ **BY A**
2 **GROUP SELF-INSURANCE POOL THAT IS A PUBLIC BODY SUBJECT TO THE**
3 **FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, IS**
4 exempt from disclosure ~~pursuant to~~ **UNDER** section 13 of ~~Act No.~~
5 ~~442 of the Public Acts of 1976, as amended, being section 15.243 of~~
6 ~~the Michigan Compiled Laws~~ **THAT ACT, MCL 15.243.**

7 (2) Notwithstanding any provisions to the contrary contained
8 in any public disclosure act or statute, in a claim or action
9 against the state or any group self-insurance pool, a person ~~shall~~
10 **IS** not ~~be~~ entitled to discover that portion of the funds or
11 liability reserve established for purposes of satisfying a claim or
12 cause of action, except that the reserve is discoverable in any
13 supplemental or ancillary proceeding to enforce a judgment.