

## Article 23.

### Local Government Risk Pools.

#### **§ 58-23-1. Short title; definition.**

This Article shall be known and may be cited as the Local Government Risk Pool Act. As used in this Article, "local government" means any county, city, or housing authority located in this State. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 864, s. 30.)

#### **§ 58-23-5. Local government pooling of property, liability and workers' compensation coverages.**

(a) In addition to other authority granted to local governments under Chapters 153A and 160A of the General Statutes to jointly purchase insurance or pool retention of their risks, two or more local governments may enter into contracts or agreements under this Article for the joint purchasing of insurance or to pool retention of their risks for property losses and liability claims and to provide for the payment of such losses or claims made against any member of the pool on a cooperative or contract basis with one another, or may enter into a trust agreement to carry out the provisions of this Article.

(b) In addition to other authority granted to local governments under Chapters 153A and 160A of the General Statutes or under G.S. 97-7 to jointly purchase insurance or pool retention of their risks, two or more local governments may enter into contracts or agreements pursuant to this Article to establish a separate workers' compensation pool to provide for the payment of workers' compensation claims under Chapter 97 of the General Statutes.

(c) In addition to other authority granted to local governments under Chapters 153A and 160A of the General Statutes to pool retention of their risks, two or more local governments may enter into contracts or agreements under this Article to establish pools providing for life or accident and health insurance for their employees on a cooperative or contract basis with one another; or may enter into a trust agreement to carry out the provisions of this Article.

(d) A workers' compensation pool established under this Article may only provide coverage for workers' compensation, employers' liability, and occupational disease claims.

(e) Local governments that intend to operate under this Article shall give the Commissioner 30 days' advance written notification, in a form prescribed by the Commissioner, that they intend to organize and operate risk pools pursuant to this Article. Local governments that jointly purchase insurance or pool retention of their risks under authority granted to them in Chapters 153A and 160A of the General Statutes or under G.S. 97-7 and that do not provide the Commissioner with the notification prescribed by this subsection shall not be subject to regulation by the Commissioner and shall not be under the jurisdiction of the Commissioner. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 441, s. 14; 2001-334, s. 18.3.)

#### **§ 58-23-10. Board of trustees.**

(a) Each pool will be operated by a board of trustees consisting of at least five persons who are elected officials or employees of local governments within this State. The board of trustees of each pool will:

- (1) Establish terms and conditions of coverage within the pool, including underwriting criteria and exclusions of coverage;
- (2) Ensure that all valid claims are paid promptly;
- (3) Take all necessary precautions to safeguard the assets of the pool;

- (4) Maintain minutes of its meeting and make those minutes available to the Commissioner;
  - (5) Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group and delineate in written minutes of its meetings the areas of authority it delegates to the administrator; and
  - (6) Establish guidelines for membership in the pool.
- (b) The board of trustees may not:
- (1) Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the Commissioner.
  - (2) Borrow any moneys from the pool or in the name of the pool, except in the ordinary course of business, without first advising the Commissioner of the nature and purpose of the loan and obtaining prior approval from the Commissioner. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

**§ 58-23-15. Contract.**

A contract or agreement made pursuant to this Article must contain provisions:

- (1) For a system or program of loss control;
- (2) For termination of membership including either:
  - a. Cancellation of individual members of the pool by the pool; or
  - b. Election by an individual member of the pool to terminate its participation;
- (3) Requiring the pool to pay all claims for which each member incurs liability during each member's period of membership, except where a member has individually retained the risk, where the risk is not covered, and except for amount of claims above the coverage provided by the pool.
- (4) For the maintenance of claim reserves equal to known incurred losses and loss adjustment expenses and to an estimate of incurred but not reported losses;
- (5) For a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled, or paid;
- (6) That the pool may establish offices where necessary in this State and employ necessary staff to carry out the purposes of the pool;
- (7) That the pool may retain legal counsel, actuaries, claims adjusters, auditors, engineers, private consultants, and advisors, and other persons as the board of trustees or the administrator deem to be necessary;
- (8) That the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers;
- (9) That the pool may purchase, lease, or rent real and personal property it deems to be necessary; and
- (10) That the pool may enter into financial services agreements with financial institutions and that it may issue checks in its own name. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

**§ 58-23-20. Termination.**

A pool or a terminating member must provide at least 90 days' written notice of the termination or cancellation. A workers' compensation pool must notify the Commissioner of the termination or cancellation of a member within 10 days after notice of termination or cancellation is received or issued. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

**§ 58-23-25: Repealed by Session Laws 1993, c. 452, s. 65.**

**§ 58-23-26. Financial monitoring and evaluation of pools.**

(a) Each pool shall have an annual audit by an independent certified public accountant, pursuant to Part 7 of Article 10 of this Chapter, at the expense of the pool, and shall make a copy of the audit available to the governing body or chief executive officer of each member of the pool. A copy of the audit shall be filed with the Commissioner within 130 days after the end of the pool's fiscal year, unless that time is extended by the Commissioner. The annual audit shall report the financial position of the pool in conformity with statutory accounting practices prescribed or permitted by the Commissioner.

(b) Each pool shall have an actuarial evaluation of its loss and loss adjustment expense reserves, including reserves for loss and loss adjustment expenses incurred but not reported, performed annually by a qualified actuary. A copy of the evaluation shall be filed with the Commissioner along with the annual audit submitted pursuant to subsection (a) of this section. A "qualified actuary" shall be as defined or prescribed by the Commissioner.

(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, Part 7 of Article 10, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner. (1993, c. 452, s. 39; c. 504, s. 45; 1999-132, s. 11.4; 2001-223, s. 8.10; 2003-212, s. 12; 2009-384, s. 2.)

**§ 58-23-30. Insolvency or impairment of pool.**

(a) If, as a result of the annual audit or an examination by the Commissioner, it appears that the assets of a pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the Commissioner must notify the administrator and the board of trustees of the pool of the deficiency and his list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within 30 days after the date of the notice, the Commissioner may apply to the Superior Court of Wake County for an order requiring the pool to abate the deficiency and authorizing the Commissioner to appoint one or more special deputy commissioners, counsel, clerks, or assistants to oversee the implementation of the Court's order. The compensation and expenses of such persons shall be fixed by the Commissioner, subject to the approval of the Court, and shall be paid out of the funds or assets of the pool.

(b) If a pool is determined to be insolvent, financially impaired, or is otherwise found to be unable to discharge its legal liabilities and other obligations, each pool contract will provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's average annual contribution in order to satisfy the amount of deficiency. Members of a

pool may, by contract, agree to limit the assessment to the amount of each member's annual contribution to the pool. Such a contractual agreement shall not impair the authority granted the Commissioner by this section. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 441, ss. 16, 17.)

**§ 58-23-35. Immunity of administrators and boards of trustees.**

There is no liability on the part of and no cause of action arises against any board of trustees established or administrator appointed pursuant to G.S. 58-23-10, their representatives, or any pool, its members, or its employees, agents, contractors, or subcontractors for any good faith action taken by them in the performance of their powers and duties in creating or administering any pool under this Article. (1985 (Reg. Sess., 1986), c. 1027, s. 26.)

**§ 58-23-40. Pools not covered by guaranty associations.**

The provisions of Articles 48 and 62 of this Chapter and of Article 4 of Chapter 97 of the General Statutes do not apply to any risks retained by local governments pursuant to this Article. (1985 (Reg. Sess., 1986), c. 1027, s. 26; 1987, c. 441, s. 18; 1993, c. 504, s. 16.)

**§ 58-23-45. Relationship to other insurance laws.**

Unless local government risk pools are specifically referenced in a particular section of this Chapter, no provisions in this Chapter other than this Article apply to local government risk pools. (1999-351, s. 6.)