

1977 Senate Bill 470

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## CHAPTER 346, Laws of 1977

AN ACT to amend 66.18; and to create 601.33, 611.11 (4) and 611.23 of the statutes, relating to liability insurance for the state and municipalities.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 66.18 of the statutes is amended to read:

**66.18 Liability insurance.** The state, ~~and municipalities~~ or any municipality as defined in s. 345.05 (1) (a), ~~are~~ is empowered to procure risk management services and liability insurance covering both the state or municipal corporation municipality and their its officers, agents and employees. A municipality may participate in and pay the cost of risk management services and liability insurance through a municipal insurance mutual organized under s. 611.23.

NOTE: Under s. 66.30 (2), Wis. stats., as affected by ch. 123, laws of 1975, any municipality may contract with other municipalities for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law, unless such action is expressly excluded elsewhere in the Wisconsin statutes. As interpreted by the attorney general, this provision is applicable only where each unit of government is empowered to carry out the particular service or function involved. [63 Ops. Atty. Gen. 453, 462-3 (1974)]

Section 66.18, Wis. stats., presently empowers municipalities, as defined in s. 345.05 (1) (a), Wis. stats., to procure liability insurance for themselves and their officers, agents and employes; therefore, a municipality is authorized under s. 66.30 (2), to contract with other municipalities to procure liability insurance jointly from an authorized insurer. This does not authorize any municipality to act as an insurer for another municipality on a mutual or reciprocal or any other basis, however. "Municipality", as defined in s. 345.05 (1) (a), as amended by ch. 200, laws of 1975, means any county, city, village, town, school district [as enumerated in s. 67.01 (1)], sewer district, drainage district and, without restriction because of failure of enumeration, any other political subdivision of the state.

This act amends s. 66.18 to authorize municipalities to procure risk management services.

The act further amends s. 66.18 to authorize municipalities to procure risk management services and liability insurance through a municipal mutual insurance corporation. Already existing associations of municipalities could form the nucleus for such a mutual.

SECTION 2. 601.33 of the statutes is created to read:

**601.33 Exemption from taxation.** Municipal insurance mutuals organized under s. 611.11 (4) are not subject to any taxes or fees except those imposed by ss. 601.31 and 601.32.

SECTION 3. 611.11 (4) of the statutes is created to read:

611.11 (4) MUNICIPALITIES. Any number of municipalities or associations of municipalities or both may organize a municipal insurance mutual under s. 611.13, subject to s. 611.23, to provide liability insurance and risk management services for its members.

SECTION 4. 611.23 of the statutes is created to read:

**611.23 Municipal insurance mutuals.** (1) APPLICABLE RULES. On application by the organizers of a municipal insurance mutual under s. 611.11 (4), the commissioner may by order, after a hearing, relax any requirements of this chapter to facilitate the formation, financing and governance of the mutual. In the same order, the commissioner shall impose substitute requirements designed to implement the purposes of s. 611.02 (2) as elaborated in this chapter.

(2) REGULATION. Except under sub. (3), the provisions of the insurance code applying to other mutuals organized or operating under this chapter apply also to municipal insurance mutuals.

(3) INAPPLICABLE PROVISIONS. Chapters 604 to 608, 612 to 619, 625, 626 and 646 do not apply to such mutuals. The commissioner may by order, after a hearing, exempt such a mutual from any other provisions on a finding that they are unnecessary for the protection of the interests of the municipalities and their citizens.

NOTE: All other things being equal, municipalities are best advised to purchase insurance through the regular insurance companies or the state insurance fund. However, in today's volatile market insurance to meet all needs of municipalities is not always possible. It has been proposed that group plans for insurance and risk management services for municipalities be authorized and that they be freed completely from the insurance code. So far as the provision of insurance is concerned, that would be an extremely dangerous approach to a difficult problem. Municipalities of a small size are no more able than than corporations of comparable size and complexity to protect themselves in the operation of a scheme for mutual insurance. Because of the inevitable political nature of the governance of such schemes, even large municipalities are not immune to such dangers. The risks of such an enterprise are obscured by the expression "self-insurance", which has been incorrectly applied to the proposals heretofore made. What is proposed is not self-insurance — it is reciprocal or mutual insurance — and it needs regulation for the protection of its participants just as much as regulation is needed for town mutuals, reciprocals, fraternal or other mutual insurance operations.

While appropriate and substantial adaptation of the insurance law is justified, its purpose of protecting persons (including corporations) who are buyers in the insurance market can best be carried out in this novel context by giving the insurance commissioner wide discretion to apply the code fully or to exempt such mutuals from portions of it. This is especially true for liability insurance, where the potential for adverse experience and for catastrophic events is substantial. Nonregulation is an invitation to disaster for Wisconsin municipalities and their citizens.

The specific enumeration in sub. (3) is not strictly necessary but assists in delimiting the scope of applicable law. Chapters 604 to 608 deal with state insurance funds; chapters 612 to 619 deal with specialized insurance companies, foreign companies and the state risk-sharing pools; chapters 625 and 626 refer to rate regulation and chapter 646 is the state guarantee fund. The last sentence gives maximum flexibility to liberalize controls where justified.

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