

1973 Senate Bill 26

Date published:
September 25, 1973

CHAPTER 117 , Laws of 1973

AN ACT to repeal 20.145 (3) (b) and chapter 210; to amend 20.145 (4) (intro.) and (v), 25.17 (1) (s) and (t), 601.46 (3) (p); to repeal and recreate 20.145 (3) (intro.) and (a); and to create 20.145 (5) (a), 20.865 (2) (b), 25.17 (1) (sp) and (st), chapters 604, 605, 607 and 608 and 610.44 of the statutes, relating to revising state life and property insurance and the state indemnity fund, granting rule-making authority and making appropriations.

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

SECTION 1. 20.145 (3) (intro.) and (a) of the statutes are repealed and recreated to read:

20.145 (3) STATE PROPERTY INSURANCE FUND. (intro.) All moneys paid into the state property insurance fund under ch. 605, for the following purposes:

(a) *Reinsurance.* From the general fund, a sum sufficient for the purchase of reinsurance for the state property insurance fund as authorized under s. 604.04 (6).

SECTION 2. 20.145 (3) (b) of the statutes is repealed.

SECTION 3. 20.145 (4) (intro.) and (v) of the statutes are amended to read:

20.145 (4) (intro.) All moneys paid into the state life fund under ~~s. 210.05~~ ch. 607, for the following purposes:

(v) After deducting the amounts appropriated under par. (u), the balance of moneys in the state life fund to carry out the purposes of ~~said~~ that fund. Payments to the investment board pursuant to s. 20.536, payments to the general fund under ~~s. 210.05 (13) (d)~~ s. 607.21 (4) and payments for medical examinations and inspection reports shall be charged directly to this subsection.

SECTION 4. 20.145 (5) (a) of the statutes is created to read:

20.145 (5) (a) *General program operations.* A sum sufficient to carry out the purposes of ch. 608.

NOTE: If the indemnity fund is to operate at all, it must have an equivalent to the initial capital or surplus required of any other insurer. That was provided initially by a sum-sufficient appropriation in the bill creating the fund. Apparently by inadvertence, since the fund itself was continued and in fact had some premium income in 1970, the sum-sufficient appropriation was dropped from the 1969 budget law. It should be restored or else the fund must be abandoned as unworkable.

SECTION 5. 20.865 (2) (b) of the statutes is created to read:

20.865 (2) (b) *State property insurance fund and other state insurance funds.* A sum sufficient to pay the allocable share of insurance premiums pursuant to s. 605.21 and for funds created under s. 604.02 (2). Amounts expended under this paragraph on behalf of the general fund's general purpose revenues shall not be allocated back to the respective program appropriations.

SECTION 6. 25.17 (1) (s) and (t) of the statutes are amended to read:

25.17 (1) (s) State property insurance fund (~~ss. 210.02 to 210.04~~) (ch. 605);

(t) State life insurance fund (~~s. 210.05~~) (ch. 607);

SECTION 7. 25.17 (1) (sp) and (st) of the statutes are created to read:

25.17 (1) (sp) State indemnity fund (ch. 608);

(st) Any state insurance fund created under s. 604.02 (2);

SECTION 8. Chapter 210 of the statutes is repealed.

NOTE: This repeals former ch. 210 on state insurance, which is replaced by chs. 604, 605, 607 and 608.

SECTION 9. 601.46 (3) (p) of the statutes is amended to read:

601.46 (3) (p) The kind and amount of insurance carried in ~~the~~ all state insurance ~~fund~~ funds under chs. 604 to 608 together with the amount of premiums collected, the source and nature of any other income, and the disbursements made. The report shall state separately the premiums, losses, the kind and amount of insurance carried on state property, and on other than state property; and

SECTION 10. Chapters 604, 605, 607 and 608 of the statutes are created to read:

CHAPTER 604.

STATE INSURANCE FUNDS: GENERAL PRINCIPLES.

604.01 Scope. This chapter applies to all insurance funds operated by this state under chs. 605 to 608.

604.02 Continuation of funds. (1) EXISTING FUNDS. The following funds are continued:

(a) The "state property insurance fund" or "property fund", previously known as the "state insurance fund".

(b) The "state life insurance fund" or "life fund"; and

(c) The "state indemnity fund" or "indemnity fund".

NOTE: Sub. (1) continues the former state insurance funds.

Sub. (2) -- [deleted by amendment]

604.03 Composition and integrity of funds. (1) COMPOSITION. Each fund consists of premium payments, earnings from investments, amounts recovered from reinsurers or under subrogation or contribution claims and any other income, less losses paid and expenses properly charged to the fund. Each fund shall be separately maintained and accounted for.

(2) INTEGRITY OF FUND. Each fund is held in trust for the benefit of insureds and other proper claimants. It may not be spent for any other purposes of the state and may be borrowed by the state only pursuant to normal and usual investment practices under s. 604.05.

NOTE: Sub. (2) deals with a serious problem in the historic handling of the fire fund. Repeatedly the assets, which should always have been regarded as inviolable trust funds, have been raided to balance state budgets. Recent disturbances on university campuses throughout the country, including Wisconsin, have demonstrated the need to have surpluses of considerable size to spread fire and other losses on state property over time. Part of a proper insurance mechanism involves the distribution of losses over a period of years. This can only take place by a) obtaining adequate reinsurance, which is often difficult to obtain, or b) by accumulating adequate surpluses, free from predation by anyone, the legislature included. It makes no difference how legitimate the alternative use of the money - the possibility of raiding undermines the insurance utility of the fund.

The state should not borrow from the funds except pursuant to an independent investment judgment by those responsible for the investment policy of the funds, under s. 604.05.

604.04 Administration. (1) MANAGER. Each fund under chs. 605 to 608 shall be administered by a manager who shall be the commissioner. In chs. 604 to 608, "manager" means the commissioner in his capacity as manager.

(2) OTHER PERSONNEL. The manager of a fund may employ such personnel as are necessary for proper administration. To the extent practicable, he shall manage the funds, issue policies and prepare reports in the same way that as commissioner he requires other insurers to do. He may make such reasonable rules for the administration of the funds as are necessary to implement the enabling statutes.

(3) EXPENSES. No full-time state officer or employe may receive additional compensation for services under chs. 604 to 608. Appropriate portions of the salaries of such persons who do work for the funds or supervise them, and other expenses including reasonable charges for state-owned or state-rented office space and the use of

state-owned or state-rented office equipment shall be charged against each fund. Each fund shall also be charged a sum equivalent to the state premium tax that would be paid by a domestic mutual insurer organized or operating under ch. 611 and doing the same kind of insurance business, except that no such charge shall be made for the insurance of governmental units.

(4) **PAYMENT PROCEDURE.** Any charges against a fund under sub. (3) shall be certified by the commissioner, audited by the department of administration under s. 16.53 and paid by the treasurer out of the appropriate fund in accordance with procedures of the department of administration.

(5) **ADVISORY ORGANIZATION MEMBERSHIP.** The manager of a fund may have the fund join or subscribe to rate service organizations or other advisory organizations useful for the efficient operation of the fund.

(6) **REINSURANCE.** The manager may procure such reinsurance for the fund as he considers necessary for its sound operation.

(7) **INSPECTIONS.** The manager may obtain such inspections and reports on risks insured in the fund as sound insurance practice requires.

NOTE: Sub. (1) places primary administrative power for each fund in the hands of a manager, who is the commissioner.

Sub. (2) gives the manager needed hiring and rule-making authority.

Sub. (3) continues the same framework for expense allocation and accounting as have been employed in prior state funds, with one important modification. To make the funds stand on their own feet, in the full economic sense of the term, they are required to pay the equivalent of premium taxes on comparable mutual corporations. Insurance on government property is excepted, since it is absurd to tax state and local governmental units - it would be a purely circular process.

Sub. (4) provides the method of payment from the state funds for expenses under sub. (3).

Sub. (5) continues authority found in s. 210.02, but generalizes it.

Sub. (6) continues authority found in s. 210.02, but both generalizes it and simplifies it. As a fund accumulates, without depletion by raids, the need for reinsurance will decline.

Sub. (7) continues a provision now found in s. 210.04 (5).

604.05 Investments. Assets of all funds under chs. 605 to 608 shall be invested by the state investment board under s. 25.17. Each January 1 the state treasurer shall credit each fund with earnings on the invested assets in each fund for the preceding 12 months. If any fund is indebted to the general fund of the state the fund shall be charged, at the end of each calendar year, with interest on the indebtedness at the average rate earned by the state upon its bank deposits during the period of indebtedness and that sum shall be credited to the general fund.

NOTE: This continues in more general terms the provisions of s. 210.04 (6). There is an argument for making ch. 620 dealing with insurance investments applicable, but it is simpler for the investment board to operate under the law with which it is familiar.

604.06 Custody of assets and liability. (1) **CUSTODY.** The state treasurer shall have sole custody of all assets of funds under chs. 605 to 608.

(2) **LIABILITY.** Neither the state nor any person shall be liable for any obligations of the funds, and the rights of creditors shall be solely against the assets of the funds, except as otherwise provided in chs. 605 to 608.

NOTE: This continues prior law.

604.07 Bonds. The commissioner as manager of the funds and the treasurer shall file surety bonds, specifically conditioned on the performance of their duties under chs. 605 to 608, in amounts required by, and with sureties approved by, the governor.

NOTE: This continues part of s. 210.05 (2), broadened to apply to all funds.

CHAPTER 605.

STATE PROPERTY INSURANCE FUND.

605.01 Definitions. In this chapter, unless the context requires otherwise, "local governmental unit" means any city, county, town or village board or common council or school or library board.

605.02 Kinds of property insured. (1) **STATE PROPERTY.** Except as provided in s. 605.09 (1), all state property and property for which the state may be liable in the event of damage or destruction is insured in the property fund against fire and extended coverage perils under s. 605.03 (1) (a). By agreement between the manager and the person having charge of the property, it may be insured against other perils under s. 605.03 (1) (b).

(2) **NONSTATE PROPERTY.** Any local governmental unit may insure in the property fund its property or property for which it may be liable in the event of damage or destruction. Property insured under this section by a local governmental unit may not also be insured in any other manner unless the manager certifies that additional insurance is necessary, or unless the local governmental unit by resolution, a certified copy of which is filed with the manager, decides to insure specified personal property with insurers authorized to do business in this state.

NOTE: This follows previous law in ss. 210.02 and 210.04. The expression "may be liable" does not imply that there is coverage for the private owners of the property. Governmental units are protected by this fund but private interests are not, except indirectly to the extent that they are able to establish a right against the governmental unit for damages to or destruction of their property.

605.03 Coverage to be provided. (1) **GENERAL.** (a) *Mandatory coverage.* The property fund shall provide protection against fire and extended coverage perils. The coverage shall be at least as favorable as that customarily provided by policies approved by the commissioner for the use of private insurers in insuring comparable property.

(b) *Optional coverage.* The fund may also provide additional protection against other named perils or may provide protection on an all-risk basis, on such terms as the manager prescribes.

(c) *Valuation basis.* The fund may provide coverage on any appropriate valuation basis including actual cash value and replacement cost, and may cover loss from the lack of use of or reduction in the income from property caused by perils insured against.

(d) *Term of policy.* The manager may prescribe the time periods for which coverage is to be provided.

(e) *Documents.* The manager shall prepare policies and supplementary documents for the use of the fund in providing the coverage under pars. (a) and (b), but no such documents may be used by the fund if the commissioner would not approve them for the use of private insurers.

(2) **COINSURANCE.** The manager may prescribe by rule the percentages of value or cost for which coverage may be provided.

(3) **DEDUCTIBLES.** The manager may prescribe by rule that small losses in any one occurrence shall not be paid.

NOTE: Sub. (1) enlarges previous law to permit replacement cost coverage as well as actual cash value coverage, in keeping with the full range of options now available on the private market. Previous law spoke only in terms of actual cash value.

Sub. (2) permits the commissioner to require participation in the risk by the owner.

Sub. (3) is more flexible than previous law, but generally follows it, at least for state property. The use of deductibles is a sound insurance practice.

605.09 Restrictions on private insurance. (1) **STATE PROPERTY.** (a) *General.* No officer or agent of this state, and no person having charge of any property of the state or for which the state may be liable, may pay any public money to any private insurer for any insurance on property available under this chapter nor incur any indebtedness against the state to a private insurer for any such insurance, except as provided by par. (b).

(b) *Exceptions.* Par. (a) does not apply if:

1. A specific statute provides for private insurance; or
2. The manager approves the use of self-insurance funds or the purchase of insurance from private insurers on the ground that the public interest will be better protected than by insurance in the property fund; or
3. The manager terminates insurance in the property fund or property of an agency of the state because the agency does not comply with s. 605.21 (1).

(2) **PROPERTY OF LOCAL GOVERNMENTAL UNITS.** After a lawful vote of the local governmental unit to insure under this chapter, no such unit may pay out any money to any private insurer nor incur any indebtedness against the unit to a private insurer for any insurance on any property of the unit or for which the unit may be legally liable if such insurance is available under this chapter, unless it is approved by the commissioner as necessary or unless it is insurance on personal property which the unit by resolution filed with the commissioner has decided to insure in insurance companies authorized to do business in this state.

NOTE: Sub. (1) follows former law, but provides an escape hatch in the last clause, for any special case where insurance arrangements can best be made outside of the fund.

Sub. (2) follows former law.

605.21 Manner of participation in property fund. (1) **STATE PROPERTY.** The person or board having charge of property described in s. 605.02 (1) shall furnish to the manager a list of all such property under his charge with estimates of its insurable value based on such data and standards as the manager reasonably prescribes. The manager shall compute the premium, and he may consider the rates suggested by rate

service organizations in this state for the perils against which the fund insures, with such deviations and other departures from those rates as he considers sound. He shall submit to the department of administration a statement of the amount of required insurance on the property and the premium payable therefor. The amount due for insurance shall be paid to the property fund under s. 20.865 (2) (b).

(2) **NONSTATE PROPERTY.** (a) *Placing insurance.* The property fund shall insure property described in s. 605.02 (2) after receipt from the clerk of the local governmental unit of a certified copy of the resolution authorizing insurance in the property fund. The clerk shall report to the manager each policy then in force upon such property, stating the property covered by the policy and the dates of issue and of expiration, the amounts and rates of insurance and the premiums. Property already insured shall become insured by the property fund as existing policies expire or are canceled. Thereafter the insurance on all property described in s. 605.02 (2) shall be provided just as for state property, except that the premium shall be certified by the manager to the clerk of the appropriate unit.

(b) *Premium payment.* Upon receipt of certification of premium due, the premium shall be paid into the state treasury for the benefit of the property fund, within 60 days after the date of certification or the effective date of the policy, whichever is the later. Premiums for property insured effective at a later date shall be paid within 60 days after the effective date of each addition. The amount of a premium in default shall be a special charge against the local governing unit, and be included in the next certification of state taxes and charged and collected as other special charges are collected, with interest from the due date at a rate set by the commissioner by rule or, in the absence of a rule, at twice the most common prime rate charged by major banks in this state.

(c) *Withdrawal from the property fund.* Any local governmental unit may terminate its insurance in the property fund by a majority vote, and upon certifying such action to the manager the insurance in force in the fund shall terminate upon expiration of the policy unless the unit specifies an earlier date for termination. In case of removal or sale of property, the board may terminate the insurance on that property without terminating its entire insurance in the property fund.

(d) *Insurance of personal property.* All personal property of the local governing unit is insured and premiums therefor must be paid under this subsection except to the extent that coverage is excluded by resolution under s. 605.02 (2).

NOTE: Sub. (1) follows the general framework of s. 210.02 (1), but with many changes in the details. Sub. (2) does the same for s. 210.04 (1) to (4), again with numerous changes in detail.

605.23 Adjustment of losses. (1) **STATE PROPERTY.** The manager shall determine within a reasonable time any loss on state property or property for which the state is liable and promptly file a statement with the state treasurer and the department of administration. The department of administration shall then issue a warrant for the amount of the loss less any applicable amounts under s. 605.03 (2) or (3), as a transfer from the property fund to the fund of the person in whose charge the building or property belongs, to be disbursed to him by the state treasurer in the same manner as other state funds for his use are paid out.

(2) **NONSTATE PROPERTY.** The manager shall determine within a reasonable time any loss on insured property owned by a local governmental unit or for which the unit is liable and promptly certify the amount to the department of administration, which shall issue a warrant on the property fund payable to the treasurer of the local

governmental unit for the amount of the loss less any applicable amounts under s. 605.03 (2) or (3).

(3) **APPRAISAL IN CASE OF DISAGREEMENT.** If there is disagreement between the manager and the local governmental unit or person in charge of state property as to the amount of the loss or damage to property covered by the property fund, the amount shall be determined by appraisal, upon the demand of the local governmental unit or person having charge of state property. The manager and the claimant shall each select a competent and disinterested appraiser and notify the other of the selection within 20 days of the demand. If either party fails to select an appraiser within the allotted time, the other party may request a court of record to appoint an appraiser. The appraisers shall first select a competent and disinterested umpire. If they do not agree on one within 15 days, then either party may request a judge of a court of record in the county in which the property is located to select a competent and disinterested umpire and he shall do so promptly. The appraisers shall then appraise the loss and damage, stating separately the actual cash value or other applicable basis of valuation and the loss or damage to each item. If they fail to agree they shall submit their differences to the umpire. An itemized award in writing of any 2 of the 3 when filed with the manager shall determine the amount of the insured value and of loss or damage. Each appraiser shall be paid by the party selecting him and other expenses of appraisal and of the umpire shall be paid by the parties equally.

(4) **CONSIDERATIONS IN ASCERTAINING LOSS.** The basic criterion for ascertaining the amount of any loss to property under this chapter is actual cash value, unless the property is insured for replacement cost. Obsolescence and plans for demolition are factors to be considered in determining actual cash value, and replacement cost shall not be paid if there are plans for demolition of the property.

NOTE: Subs. (1) to (3) substantially follow former law, except that the appraisal procedure applicable, under former law, to local property only is made applicable to state property as well. Disagreements even within state government should not be settled by political maneuvering but by a rational procedure.

Sub. (4) applies general fire insurance damage doctrine to losses under the property fund. There should be no windfall from a fire - no more to a governmental unit than to a private owner. The indemnity principle is a sound basis for measuring recovery either under property insurance policies or under the property fund.

605.24 Recovery of losses from other parties. (1) **SUIT BY ATTORNEY GENERAL.** Upon the request of the manager, the attorney general may proceed in the courts of any jurisdiction to recover from any responsible party other than an insured or any person using or dealing with the property in the course of his employment for the insured, for any loss or damage to any property covered by insurance under this chapter. Any recovery less expenses shall be paid into the property fund, but if the amount recovered less expenses exceeds that paid out by the fund, the difference shall be paid to the insured.

(2) **COLLECTION OF REINSURANCE.** The manager shall collect reinsurance due and pay the amount collected into the property fund.

(3) **RIGHT OVER AGAINST THIRD PERSONS.** The property fund may name other persons as additional persons protected under s. 605.02, but unless it does so the fund shall have any right of recovery by subrogation or otherwise against such persons that a private insurer would have and shall not lose such right because the governmental unit protected has after commencement of the coverage waived any right of recovery it

would otherwise have had, or has thereafter contracted to assume the risk that general law would have placed elsewhere.

NOTE: Sub. (1) protects the fund by subrogating it to claims against third persons.

Sub. (3) changes the rule of s. 210.02 (5) to one that protects the fund better. The fact that the property fund has no option but to cover public property on request, and in fact to do it at extremely favorable rates, should lead the legislature to protect the fund against unwise contractual assumption of risks that would normally lie elsewhere, such as on a builder, or waiver of a right of recovery that would otherwise exist, after inception of the coverage. The manager should have considerable underwriting discretion, and he may name a builder or other person as an additional insured and should normally do so. However, that discretion should be in the manager, not in the governmental unit, because it is susceptible to political abuse. This is a stricter rule than is applicable to private insurance, but is desirable. The property fund has no option but to insure and should not be subject to having private persons thrust upon it as insureds, without its consent.

605.30 Inadequacy of fund. If the property fund does not have sufficient assets to pay claims that are due, the department of administration shall issue a warrant as a transfer from the general fund to the property fund sufficient to pay the losses and the state treasurer shall pay the warrant. The property fund shall thereafter repay the general fund and the department of administration shall issue warrants for such transfer as soon as there are assets in the property fund.

NOTE: This section makes it clear that the general fund stands behind the property fund if the latter does not have enough resources, for state property as well as for local government property. Section 210.03 is not clear on that point but may easily be read to limit loss payment from the fund on state property to the amount of the fund itself. In view of the long history of legislative appropriation of the surplus in the state insurance fund, it would be irresponsible for the state not to stand behind the fund for the protection of constituent units, which should not be put to the necessity of fighting the budget battle all over again for expenditures that have been approved. The risk that the unit will get a windfall because it planned to tear the building down anyway is handled by the addition of s. 605.23 (4).

CHAPTER 607.

STATE LIFE INSURANCE FUND.

607.02 Scope of operation. (1) **TYPES OF POLICIES PERMITTED.** Subject to sub. (2), the life fund may issue to any resident of the state any kind of life insurance with any riders or endorsements thereto that the commissioner would approve for issuance by private insurers authorized to do a life insurance business in this state. Coverages may be combined and granted in the same policy by the life fund to the same extent as by a private life insurer.

(2) **LIMITS ON POLICIES FROM FUND.** No policies may be issued on any one risk exceeding \$10,000 for residents of this state.

NOTE: This continues the power and scope of operation of the fund at the same level at which it has previously operated, with one major change and some insignificant minor changes. It continues part of s. 210.05 (1) and (16). The major change in this section is limiting the fund to residents of this state.

607.03 Nature of fund. Unless expressly provided otherwise, the life fund is subject as an insurer to chs. 600 to 649, except for chs. 610 to 618 and 645 to 646, and is subject to all other laws applicable to insurers issuing life insurance, specifically including article IV of the soldiers' and sailors' civil relief act of 1940 (P.L. 861 - 76th congress) and amendments thereto or reenactments thereof. Any policy entitled to benefits under that act shall be deemed amended to conform thereto. This subsection shall remain in force concurrently with that act of congress and amendments thereto or reenactments thereof.

NOTE: The life fund should be subject to the same rules and limitations with respect to the insurance it sells as other insurers, apart from exceptions that appear in this chapter, those provisions in chs. 610 to 618 that relate to private corporations and those in chs. 645 and 646 that relate to insolvency and delinquency proceedings.

607.04 Solicitation. The life fund may not employ agents or solicitors and may not pay commissions for the procuring of insurance applications.

607.07 Examination and underwriting. (1) **MEDICAL EXAMINATIONS.** No medical examination need be required on an application for an annuity. The manager may provide for the issuance of small life insurance policies without medical examination in accordance with usual practices in the life insurance business. Otherwise life insurance shall be granted only after a medical examination made at the direction of the state health officer.

(2) **UNDERWRITING APPROVAL.** The manager or his designee shall pass upon all applications for insurance. If the application is accepted, the premium shall be paid into the life fund and a policy shall be issued, signed by the manager, promising payment out of the life fund without further liability on the part of the state.

NOTE: This section follows s. 210.05 (7), except that the underwriting procedure is adapted to the practices of private companies. The manager may decide what part of the premium should be paid with the application, and he is also given sole underwriting responsibility. The whole deposit is returned on rejection. There is no greater reason for the applicant to pay for part of his medical examination with the state fund than with a private insurer.

607.15 Surplus distribution. The net profits of the life fund shall be distributed annually among the policyholders, except that so far as is practicably possible, the ratio of surplus to assets shall be kept between 7% and 10%.

NOTE: This follows closely s. 210.05 (9) with some simplification in language.

607.21 Payments from life fund. In addition to the payments under s. 604.04 (3), and the payments which become due under its policies, the life fund shall pay:

(1) A fee, to be determined by the manager, to the medical examiner for each medical examination made under s. 607.07 (1);

(2) The actual expense of inspection reports;

(3) The actual expense of adjustment of any loss or the defense or prosecution of any action; and

(4) A fee equal to 2% of net premiums collected to the department of administration for general services rendered by state administrative and legislative agencies which are not otherwise charged to the fund.

NOTE: This section continues s. 210.05 (13), with minor changes. Part of that subsection does not need repeating since it is covered by the general provisions in s. 604.04 (2) and (4).

607.22 Policy loans. (1) **GENERAL.** Loans may be made on a policy to an aggregate amount which, together with accumulated interest at rates to be fixed from time to time by the commissioner, and applicable to all policies then in force, does not exceed the reserve on the next policy anniversary on the basis of the premiums then paid. Any premium not paid when due shall be charged as a policy loan. When the unpaid loan and interest equals the reserve, the policy shall terminate, but before that time the whole or any part of a loan may be repaid.

(2) **EXISTING POLICIES.** The interest on loans on policies in effect on the effective date of this chapter (1973) shall be set under sub. (1) but may not exceed 6%.

NOTE: This continues s. 210.05 (10), but with a more flexible interest rate not limited to 6%, except on policies already in existence.

CHAPTER 608. STATE INDEMNITY FUND.

608.01 Authority. The indemnity fund may reinsure insurers authorized to do business in this state with respect to insurance policies guaranteeing loans made to purchase new or existing single or multiple family residential housing or to finance the construction, remodeling or renovating of such housing in congested urban and other areas, in order to replace or improve substandard and deteriorated housing.

NOTE: The statute creating this fund in 1967 (s. 210.20 (1)) declared its purpose as follows:

"The legislature declares its concern that many residents of this state are living in congested urban areas in substandard housing and quite often in areas of deteriorating neighborhoods. The legislature recognizes that adequate multiple unit and other housing can and should be provided by private capital under our free enterprise system and in accordance with sound investment practices. The legislature finds that the flow of private investment capital into such housing can be stimulated by a system wherein qualified lending institutions may be indemnified for losses incurred as a result of nonpayment of principal, interest, or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness. In furtherance of this state interest, there is established an indemnity fund."

It is not necessary to provide the above essay in the text of the statute.

The fund has been little used and it is not certain that it will be much used, but that is no reason to discontinue it. This section somewhat broadens the authority of the fund.

608.02 Coverage limitation. The insurer shall assume the risk of loss for at least the first 20% of each insured loan and the reinsurance to be afforded by the indemnity fund shall not exceed the amount of loss remaining.

608.03 Underwriting. The insurer issuing the insurance policy shall be primarily responsible for the underwriting selection of qualified lenders and borrowers, the servicing of such insurance policies and the adjustment of losses resulting therefrom.

The manager may reject reinsurance from any insurer that he considers to be engaging in unsound practices, and may reject the reinsurance of any particular insurance risk if, in his sole judgment, the lender, the borrower, the inadequacy of community zoning and planning ordinances or any other underwriting factors are such as to create an insurance risk not reinsurable on a sound basis by the indemnity fund.

608.04 Premium basis. The reinsurance premium to be charged shall be determined by the manager in accordance with the best available rate making and actuarial information and shall be adequate to provide for the insurance risk assumed.

608.05 Payments from fund. (1) **ADJUSTMENT OF LOSS.** The manager shall determine the losses or other payments to be made under the reinsurance within a reasonable time and promptly certify the amount to the department of administration, which shall issue a warrant on the indemnity fund for the amount, payable to the primary insurer.

(2) **RIGHT OF APPRAISAL.** If any difference of opinion arises between the primary insurer and the manager as to the amount due under sub. (1), the amount shall be determined by appraisal, upon the demand of either party. The appraisal procedure shall be the same as under s. 605.23 (3).

NOTE: The adjustment and appraisal procedure of ch. 605 and this chapter should be the same. Only the subject matter is different, and that not greatly since both are concerned with ascertaining property values.

SECTION 11. 610.44 of the statutes is created to read:

610.44 Transition provisions for state funds. Any coverage in effect through the various state funds on the effective date of this chapter (1973) is continued in effect.

SECTION 12. Program responsibility citations. (1) **EXECUTIVE OFFICE.** In the list of program responsibilities specified for the executive office under section 14.011 (intro.) of the statutes, references to "210.02 (1)" and "210.04 (5)" are deleted, and reference to "604.02 (2)" is inserted.

(2) **STATE TREASURER.** In the list of program responsibilities specified for the office of the state treasurer under section 14.561 of the statutes, references to "210.02", "210.04", and "210.05" are deleted, and references to "604.04 (4)", "604.06 (1)", and "604.07" are inserted.

(3) **DEPARTMENT OF ADMINISTRATION.** In the list of program responsibilities specified for the department of administration under section 15.101 (intro.) of the statutes, references to "210.03", "210.04 (5)", "210.05 (12), (13) (a) and (c)" are deleted, and references to "604.04 (4)", "605.23 (1)", and "605.30" are inserted.

(4) **DEPARTMENT OF JUSTICE.** In the list of program responsibilities specified for the department of justice under section 15.251 (intro.) of the statutes, reference to "605.24 (1)" is inserted.

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(5) INVESTMENT BOARD. In the list of program responsibilities specified for the investment board under section 15.761 of the statutes, reference to "210.05 (2)" is deleted, and reference to "604.05" is inserted.
