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10/29/2012

1 **AN ACT** *to renumber* 605.09; *to renumber and amend* 605.02 (1) and 605.21 (2); *to*
2 *amend* 605.02 (2) (intro.) and (a) to (c), 605.21 (1), 605.21 (3), 605.21 (4), 605.23
3 (1) and (2) and 605.24 (3); and *to create* 605.01 (3), 605.02 (1) (b), 605.09 (1) (title),
4 605.09 (2), 605.21 (1m) and 605.21 (2) (c) of the statutes; **relating to:** allowing
5 American Indian tribes and bands to insure governmental facilities under the local
6 government property insurance fund.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations. At its September 25, 2012 meeting, staff from the office of the commissioner of insurance (OCI) briefed the special committee on conversations they have had with tribal governments about the availability of insurance to tribal governments. Based on these conversations, the OCI staff suggested that the special committee develop legislation to open the local government property insurance fund to tribal governments.

Currently, a local governmental unit (including general purpose and special purpose units of government) may insure its property in the local government property insurance fund (fund), administered by the OCI. The governing body of the governmental unit must adopt a resolution authorizing insurance of its property in the fund. With certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

This draft allows American Indian tribes and bands in this state to insure their property in the fund under terms substantially similar to the terms that apply to local governmental units. It requires the governing body of a tribe to adopt a resolution authorizing the insurance and agreeing to abide by the rules and terms of the program and any policy issues to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund.

7 **SECTION 1.** 605.01 (3) of the statutes is created to read:

1 605.01 (3) "Tribe" means a federally recognized American Indian tribe or band in this
2 state.

3 **SECTION 2.** 605.02 (1) of the statutes is renumbered 605.02 (1) (a) and amended to read:

4 605.02 (1) (a) PROPERTY OF LOCAL GOVERNMENTAL UNITS AND TRIBES. Any Except as
5 provided in par. (b), a local governmental unit or tribe may insure in the property fund its
6 property or, subject to sub. (2), property for which it may be liable in the event of damage or
7 destruction. Property insured under this section by a local governmental unit or tribe may not
8 also be insured in any other manner unless the manager certifies that additional insurance is
9 necessary, or unless the local governmental unit or tribe by resolution, a certified copy of
10 which is filed with the manager, decides to insure specified personal property with insurers
11 authorized to do business in this state.

12 **SECTION 3.** 605.02 (1) (b) of the statutes is created to read:

13 605.02 (1) (b) A tribe may not insure a building in which the tribe conducts class II
14 gaming, as defined in 25 USC 2703 (7), or class III gaming, as defined in 25 USC 2703 (8),
15 or a hotel, restaurant, convention center, or other facility attached to or associated with such
16 a building.

NOTE: OCI staff indicate that this limitation is necessary because the
value of tribal casinos and associated facilities is greater than the fund
can insure. OCI staff also indicate that, according to their interviews
with tribal staff, tribes do not appear to have difficulty procuring
insurance for these facilities on the open market.

17 **SECTION 4.** 605.02 (2) (intro.) and (a) to (c) of the statutes are amended to read:

18 605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY. (intro.) The property fund may
19 cover a building or structure specified in sub. (1) that is not owned by a local governmental
20 unit or tribe only if all of the following conditions are met:

1 (a) The building or structure is listed and described as a nonowned building or structure
2 in the local governmental unit's or tribe's statement of values.

3 (b) The local governmental unit or tribe is contractually liable in the event that the
4 building or structure is damaged or destroyed.

5 (c) The building or structure is in the local governmental unit's or tribe's care, custody,
6 or control.

7 **SECTION 5.** 605.09 of the statutes is renumbered 605.09 (1).

8 **SECTION 6.** 605.09 (1) (title) of the statutes is created to read:

9 605.09 (1) (title) PROPERTY OF LOCAL GOVERNMENTAL UNITS.

10 **SECTION 7.** 605.09 (2) of the statutes is created to read:

11 605.09 (2) PROPERTY OF TRIBES. A policy issued to a tribe under this chapter shall be
12 suspended, and no claims may be paid under the policy if the tribe pays out any money to any
13 private insurer or incurs any indebtedness against the tribe to a private insurer for any
14 insurance on any property of the tribe or for which the tribe may be legally liable if such
15 insurance is available under this chapter, unless one of the following applies:

16 (a) The insurance is approved by the commissioner as necessary.

17 (b) The insurance is on personal property that the tribe has decided, by resolution
18 adopted by the governing body of the tribe, to insure and the tribe has notified the
19 commissioner of its decision to insure the personal property.

20 (c) The insurance is on property described in s. 605.02 (1) (b).

NOTE: A similar provision in current law applies to property of local
governmental units.

21 **SECTION 8.** 605.21 (1) of the statutes is amended to read:

1 **(1)** (title) ~~PLACING INSURANCE; LOCAL GOVERNMENTAL UNITS.~~ The property fund shall
2 insure property described in s. 605.02 for a local governmental unit after receipt from the clerk
3 of the local governmental unit of a certified copy of the resolution authorizing insurance in
4 the property fund. The clerk shall report to the manager each policy then in force upon such
5 property, stating the property covered by the policy and the dates of issue and of expiration,
6 the amounts and rates of insurance and the premiums. Property already insured shall become
7 insured by the property fund as existing policies expire or are canceled. Thereafter the
8 insurance on all property described in s. 605.02 shall be provided. Premiums shall be certified
9 by the manager to the clerk of the appropriate unit.

10 **SECTION 9.** 605.21 (1m) of the statutes is created to read:

11 **605.21 (1m)** PLACING INSURANCE; TRIBES. (a) The property fund shall insure property
12 described in s. 605.02 for a tribe after receipt from the tribe of a certified copy of a resolution
13 of the tribe's governing body that does all of the following:

- 14 1. Authorizes insurance in the property fund.
- 15 2. States that the tribe agrees to abide by this chapter and the terms of a policy under
16 this chapter and to comply with all directives of the manager and all decisions an umpire under
17 s. 605.23 (2), to the same extent that a local governmental unit is required, and that the tribe
18 will not raise the defense of sovereign immunity in any action in a court of competent
19 jurisdiction to enforce this chapter, a policy under this chapter, a directive of the manager, or
20 the decision of an umpire.
- 21 3. Designates an administrative officer of the tribe responsible for insurance under the
22 property fund.

23 (b) The administrative officer designated in par. (a) 3. shall report to the manager each
24 policy then in force upon such property, stating the property covered by the policy and the

1 dates of issue and of expiration, the amounts and rates of insurance and the premiums.
2 Property already insured shall become insured by the property fund as existing policies expire
3 or are canceled. Thereafter, the insurance on all property described in s. 605.02 shall be
4 provided. Premiums shall be certified by the manager to the clerk of the appropriate unit.

5 **SECTION 10.** 605.21 (2) of the statutes is renumbered 605.21 (2) (a) and amended to
6 read:

7 605.21 (2) (a) Upon receipt of certification of premium due, the premium shall be paid
8 into the state treasury for the benefit of the property fund, within 60 days after the date of
9 certification or the effective date of the policy, whichever is the later. Premiums for property
10 insured effective at a later date shall be paid within 60 days after the effective date of each
11 addition.

12 (b) The amount of a premium payable by a local governmental unit that is in default
13 shall be a special charge against the local governing unit, and be included in the next
14 certification of state taxes and charged and collected as other special charges are collected,
15 with interest from the due date at a rate set by the commissioner by rule or, in the absence of
16 a rule, at twice the most common prime rate charged by major banks in this state.

17 **SECTION 11.** 605.21 (2) (c) of the statutes is created to read:

18 605.21 (2) (c) If a premium due by a tribe is more than 90 days past due, the policy is
19 suspended. During the time that the policy is suspended, no claims may be paid under the
20 policy.

21 **SECTION 12.** 605.21 (3) of the statutes is amended to read:

22 605.21 (3) **WITHDRAWAL FROM THE PROPERTY FUND.** ~~Any~~ A local governmental unit may
23 ~~terminate its insurance in the property fund,~~ by a majority vote, and ~~upon~~ a tribe may, by
24 resolution of its governing body, terminate its insurance in the property fund. Upon certifying

1 such action to the manager, the insurance in force in the fund shall terminate upon expiration
2 of the policy unless the local governmental unit or tribe specifies an earlier date for
3 termination. In case of removal or sale of property, the board may terminate the insurance on
4 that property without terminating its entire insurance in the property fund.

5 **SECTION 13.** 605.21 (4) of the statutes is amended to read:

6 605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local
7 governing unit or tribe is insured and premiums therefor must be paid under this section except
8 to the extent that coverage is excluded under s. 605.02 (1) (b) or by resolution under s. 605.02
9 (1) (a).

10 **SECTION 14.** 605.23 (1) and (2) of the statutes are amended to read:

11 605.23 (1) PAYMENT FOR LOSSES. The manager shall determine within a reasonable time
12 any loss on insured property owned by a local governmental unit or tribe or for which the local
13 governmental unit or tribe is liable and promptly certify the amount to the department of
14 administration, which shall issue a warrant on the property fund payable to the treasurer of the
15 local governmental unit or tribe for the amount of the loss less any applicable amounts under
16 s. 605.03 (2) or (3).

17 (2) APPRAISAL IN CASE OF DISAGREEMENT. If there is disagreement between the manager
18 and the local governmental unit or tribe as to the amount of the loss or damage to property
19 covered by the property fund, the amount shall be determined by appraisal, upon the demand
20 of the local governmental unit or tribe. The manager and the claimant shall each select a
21 competent and disinterested appraiser and notify the other of the selection within 20 days of
22 the demand. If either party fails to select an appraiser within the allotted time, the other party
23 may request a court of record to appoint an appraiser. The appraisers shall first select a
24 competent and disinterested umpire. If they do not agree on one within 15 days, then either

1 party may request a judge of a court of record in the county in which the property is located
2 to select a competent and disinterested umpire and the judge shall do so promptly. The
3 appraisers shall then appraise the loss and damage, stating separately the actual cash value or
4 other applicable basis of valuation and the loss or damage to each item. If they fail to agree
5 they shall submit their differences to the umpire. An itemized award in writing of any 2 of
6 the 3 when filed with the manager shall determine the amount of the insured value and of loss
7 or damage. Each appraiser shall be paid by the party selecting that appraiser and other
8 expenses of appraisal and of the umpire shall be paid by the parties equally.

9 **SECTION 15.** 605.24 (3) of the statutes is amended to read:

10 605.24 (3) RIGHT OVER AGAINST 3RD PERSONS. The property fund may name other
11 persons as additional persons protected under s. 605.02, but unless it does so the fund shall
12 have any right of recovery by subrogation or otherwise against such persons that a private
13 insurer would have and shall not lose such right because the local governmental unit or tribe
14 protected has after commencement of the coverage waived any right of recovery it would
15 otherwise have had, or has thereafter contracted to assume the risk that general law would have
16 placed elsewhere.

17 (END)