CHAPTER 605

LOCAL GOVERNMENT PROPERTY INSURANCE FUND

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Cross-reference: See definitions in ss. 600.03 and 628.02.

NOTE: Chapter 117, laws of 1973, which created this chapter, contains explanatory notes.

605.01 Definitions. In this chapter, unless the context requires otherwise:

(1) "Local governmental unit" means any local governmental association, authority, board, commission, department, independent agency, institution, office, society or other body, including any city, county, town or village board or common council, school or library board, or board of control of a cooperative educational service agency.

(2) "Property fund" means the local government property insurance fund.

History: 1973 c. 117, 333; 1979 c. 221; 1985 a. 335.

605.02 Kinds of property insured. (1) PROPERTY OF LOCAL GOVERNMENTAL UNITS. Any local governmental unit may insure in the property fund its property or, subject to sub. (2), 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.

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

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

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

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

(d) The building or structure is used for a legitimate governmental purpose.

History: 1973 c. 117; 1979 c. 221; 2007 a. 170.

605.03 Coverage to be provided. (1) GENERAL. (a) *Mandatory coverage.* Subject to par. (f), 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 filed with 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.* Subject to par. (f) 1., 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.

(f) *Limits on issuance, renewal, and filing claims; final distribution.* 1. No coverage under the property fund may be issued on or after July 1, 2017. No coverage may be renewed after December 31, 2017. No coverage may terminate later than December 31, 2018.

2. All claims must be filed with the property fund by no later than July 1, 2019. No claim filed after July 1, 2019, will be covered by the fund.

3. Upon the cessation of all operations of the property fund, the manager shall distribute any moneys remaining in the fund among the local governmental units that were insured under the fund on July 1, 2017.

(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.

History: 1973 c. 117; 2007 a. 168; 2017 a. 59.

605.09 Restrictions on private insurance. 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.

History: 1973 c. 117; 1975 c. 41; 1979 c. 221.

605.21 Manner of participation in property fund. (1) PLACING INSURANCE. Subject to s. 605.03 (1) (f), the property fund shall insure property described in s. 605.02 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 shall be provided. Premiums shall be certified by the manager to the clerk of the appropriate unit.

(2) 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 30 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 30 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.

(3) 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.

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

History: 1973 c. 117, 333; 1979 c. 102, 221; 2007 a. 170; 2015 a. 90; 2017 a. 59.

605.22 Property fund rates and assets. (1) RATE DETERMINATION. The property fund's annual premium rates shall be actuarially determined to be sufficient to maintain a ratio of net premiums written to surplus of no less than 200 percent. The rate standards under s. 625.11 shall apply to property fund rates.

(2) ASSESSMENTS. The property fund shall levy an assessment on local governmental units participating in the fund whenever the ratio of net premiums written to surplus is greater than 225 percent. Assessments shall be levied on all insured local governmental units participating in the fund in the fiscal year ending immediately prior to the date of the notice of assessment. Assessments shall be levied at the same rate according to each insured local governmental unit's proportional share of direct premiums written in the fund's fiscal year that ended immediately prior to the date of the notice of assessment. The date on which the assessment is due shall be specified in the notice of assessment and may not be less than 60 days after the date of the notice of assessment. The property fund shall collect unpaid assessments in the manner provided for collection of unpaid premiums under s. 605.21 (2). If an insured local governmental unit does not pay an assessment within 60 days after the assessment is due, the fund shall terminate coverage for that local governmental unit. If a local governmental unit cancels its coverage and a refund of premiums is due to the local governmental unit, the refund due shall be reduced by the amount of any unpaid assessment. A local governmental unit that fails to pay an assessment when due may not participate in the property fund until the past due assessment is paid.

(3) DIVIDENDS. The property fund shall pay a dividend to its insured local governmental units whenever the ratio of net premiums written to surplus is less than 45 percent, provided that, following the payment of the dividend, the ratio of net premiums written to surplus does not exceed 100 percent and the amount of surplus is not less than $3,000,000. Dividends shall be paid to all insured local governmental units participating in the property fund in the fiscal year that ended immediately prior to the date of the notice of the dividend. Dividends shall be paid at the same rate according to each insured local government unit's proportional share of premiums written in the fund's fiscal year that ended immediately prior to the date of the notice of the dividend.

History: 2015 a. 325.

605.23 Adjustment of losses. (1) PAYMENT FOR LOSSES. Subject to s. 605.03 (1) (f) 2., 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).

(2) APPRAISAL IN CASE OF DISAGREEMENT. If there is disagreement between the manager and the local governmental unit 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. 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 the judge 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 that appraiser and other expenses of appraisal and of the umpire shall be paid by the parties equally.

(3) 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.

History: 1973 c. 117; 1979 c. 102, 221; 2017 a. 59.

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 the person's 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 3RD 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.

History: 1973 c. 117; 1979 c. 102 s. 236 (15); 2005 a. 253.

There is nothing in either chs. 604 or 605, or anywhere else, that prohibits the Fund from voluntarily contracting away sub. (3) protection. Wisconsin State Local Government Property Insurance Fund v. Thomas A. Mason Company, 2008 WI App 49, 308 Wis. 2d 512, 748 N.W.2d 476, 07-1112.

605.30 Inadequacy of fund. If the property fund does not have sufficient assets to pay claims that are due, the secretary of administration shall transfer from the general fund to the property

fund an amount sufficient to pay the losses and shall pay the losses. The property fund shall thereafter repay the general fund this amount and the secretary of administration shall transfer the amount as soon as there are assets in the property fund.

History: 1973 c. 117; 2003 a. 33.