

LEGISLATIVE BILL 398

Approved by the Governor April 29, 1987

Introduced by Landis, 46; Remmers, 1; Lynch, 13;
Haberman, 44; Pappas, 42; Wehrbein, 2

AN ACT relating to insurance; to amend sections 23-2413 and 81-8,231, Reissue Revised Statutes of Nebraska, 1943, and sections 48-128, 48-144.02, 48-144.04, 48-146, 48-146.02, 48-162.02, 48-178.01, and 81-8,239.01, Revised Statutes Supplement, 1986; to adopt the Intergovernmental Risk Management Act; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 39 of this act shall be known and may be cited as the Intergovernmental Risk Management Act.

Sec. 2. The Legislature hereby finds and declares that protection against losses due to liability and damage or loss of property is essential to the proper functioning of state and local government. The resources of state and local governmental agencies are often burdened by the securing of necessary insurance protection against such losses through standard insurance carriers. Proper risk management requires the spreading of risk so as to minimize fluctuation in insurance needs. The Legislature further finds that all contributions of financial and administrative resources made by state and local governmental agencies pursuant to an agreement authorized by the Intergovernmental Risk Management Act are made for a public and governmental purpose.

Sec. 3. As used in the Intergovernmental Risk Management Act, unless the context otherwise requires:

(1) Errors and omissions liability shall mean liability to which a member of a governing body of a public agency, an elected or appointed officer of a public agency, or an employee of a public agency may be subject in an individual capacity by reason of any error, misstatement, misleading statement, act, omission, neglect of duty, or breach of duty, including misfeasance or nonfeasance, in the performance of duties for the public agency;

(2) General liability shall mean any

liability, other than workers' compensation liability, to which a public agency may be subject (a) directly, (b) by reason of liability arising out of an act or omission of its employee, agent, or officer in the course and scope of employment, (c) by reason of liability arising out of an act or omission of its student in the course and scope of education or training, or (d) by reason of liability it has assumed by contract. It shall include, but not be limited to, liability commonly protected against by casualty insurance, general liability insurance, professional liability insurance, automobile insurance, motor vehicle liability insurance, and surety and fidelity insurance;

(3) Group self-insurance shall mean the pooling of public money by a risk management pool from contributions by its members for the purpose of payment of losses incurred by members which are protected against by the pool;

(4) Member shall mean a public agency which is a party to an agreement providing for the establishment and operation of a risk management pool;

(5) Public agency shall mean any county, city, village, school district, public power district, rural fire district, or other political subdivision of this state, the State of Nebraska, the University of Nebraska, and any corporation whose primary function is to act as an instrumentality or agency of the State of Nebraska;

(6) Risk management pool or pool shall mean an association formed by two or more public agencies by an agreement pursuant to the Intergovernmental Risk Management Act providing for joint and cooperative action in the use of their financial or administrative resources in order to accomplish any of the public and governmental purposes authorized by the act;

(7) Standard insurance shall mean any policy of insurance issued by a company authorized to transact insurance business in the State of Nebraska;

(8) State of Nebraska shall include any department, agency, board, bureau, commission, or council of the State of Nebraska authorized to participate in a risk management pool by the Risk Manager pursuant to section 81-8,239.01; and

(9) Workers' compensation liability shall mean liability to which a public agency may be subject as an employer under the Nebraska Workers' Compensation Act.

Sec. 4. Any two or more public agencies may make and execute an agreement providing for joint and cooperative action in accordance with the

Intergovernmental Risk Management Act to form, become members of, and operate a risk management pool for the purpose of providing to members risk management services and insurance coverages in the form of group self-insurance or standard insurance, including any combination of group self-insurance and standard insurance, to protect members against losses arising from any of the following:

(1) General liability;
(2) Damage, destruction, or loss of real or personal property, including, but not limited to, loss of use or occupancy, and loss of income or extra expense resulting from loss of use or occupancy;

(3) Errors and omissions liability; and
(4) Workers' compensation liability.

Sec. 5. (1) Any risk management pool organized pursuant to the Intergovernmental Risk Management Act, whether or not a body corporate, shall have the power to sue and be sued, make contracts, hold and dispose of real and personal property, borrow money, contract debt, and pledge any pool assets in the name of the pool.

(2) The power to make contracts prescribed in subsection (1) of this section shall specifically include the power to establish the risk management pool as a separate legal or administrative entity.

Sec. 6. Any agreement entered into for the purpose of establishing and operating a risk management pool shall provide:

(1) A financial plan setting forth in general terms the:

(a) Types of insurance coverage to be offered by the pool, applicable deductible levels, and maximum level of claims which the pool will self-insure;

(b) Amount of cash reserves to be set aside for the payment of claims;

(c) Amount of standard insurance to be purchased by the pool to provide coverage over and above the claims which are not to be satisfied directly from the pool's resources; and

(d) Amount of aggregate excess insurance coverage and specific excess insurance coverage to be purchased in a given fiscal period; and

(2) A plan of management setting forth:

(a) The means of establishing the governing authority of the pool. (i) The governing authority shall be a board of directors who are elected or appointed officials of member public agencies. (ii) The number of members of the board who are either elected or

appointed officials of member public agencies shall not be less than the requisite number of members needed to transact all the business of the pool;

(b) The responsibility of the board of directors with regard to fixing annual contributions to the pool from members, maintaining reserves, levying and collecting from members assessments for deficiencies, disposing of surpluses, and administering the pool in the event of termination or insolvency;

(c) A procedure by which new members may be admitted to and existing members may leave the pool. The procedure shall permit members to withdraw from participation in a pool. Withdrawal shall not affect the obligations of the withdrawing member under any contract or agreement with the pool or impair the payment of any outstanding bonds or any interest on such bonds;

(d) The identification of funds and reserves by exposure area;

(e) A provision requiring that all claims shall be paid promptly;

(f) A provision requiring that no part of the net earnings or assets of the pool shall inure to the benefit of any private person;

(g) A provision requiring that, upon dissolution of the pool, all of the assets of the pool will vest in member public agencies in the manner set forth in the plan of management;

(h) A system or program of loss control; and

(i) Any other standards, procedures, or practices necessary or desirable for the continued operation of the pool.

Sec. 7. (1) A risk management pool shall not provide any form of group self-insurance to its members until it has received a certificate of authority to do so from the Department of Insurance. Such certificate shall expire on the last day of April in each year and shall be renewed annually thereafter if the risk management pool has continued to comply with the Intergovernmental Risk Management Act and the rules and regulations of the Department of Insurance adopted and promulgated thereunder.

(2) The Department of Insurance shall issue a certificate of authority to a risk management pool if the Director of Insurance determines:

(a) That the pool's financial plan and plan of management and any amendments thereto satisfy the requirements of section 6 of this act;

(b) That the pool has adequate surplus and

reserves and will receive adequate financial contributions from its members in order to operate in a manner which is not hazardous to the public; and

(c) That any individual, corporation, partnership, or other entity engaged by the pool to provide services in connection with its management or operation is capable of running the affairs of the pool, is of good character and known business ability, and has a practical knowledge of the executive duties of conducting a risk management pool.

Sec. 8. The Department of Insurance may adopt and promulgate reasonable rules and regulations (1) requiring a risk management pool to maintain reserves similar to those required of a domestic insurance company offering the same coverage as the group self-insurance coverage offered by a pool to its members, (2) requiring prior approval by the Director of Insurance before a risk management pool distributes dividends to its members in order to ensure that adequate reserves will be maintained, (3) requiring a risk management pool to process and act upon claims in accordance with the guidelines applicable for domestic insurance companies, and (4) requiring the pool to notify the Department of Insurance thirty days in advance of any change in the contribution level of the members, of any change in the coverages offered by the pool, and of any amendments to the agreement establishing the pool.

Sec. 9. (1) A member of a risk management pool may voluntarily terminate its participation in the pool by giving written notice to the other members of the pool and the Director of Insurance at least ninety days prior to the desired termination date. Such voluntary termination shall be approved by the Director of Insurance if he or she finds that the terminating member and the remaining members of the pool are in good standing and have met all requirements of the laws of this state, any rules or regulations adopted and promulgated by the Department of Insurance pursuant to the Intergovernmental Risk Management Act, and any bylaws of the risk management pool.

(2) A member of a risk management pool may be involuntarily terminated as a member of the pool if the Director of Insurance finds, after due notice and hearing, that the member (a) has failed to pay any contribution or assessment due to the pool, (b) has failed to discharge any other obligation it owes to the pool, or (c) has failed to comply with any laws of this state, any rules or regulations adopted and promulgated

by the Department of Insurance pursuant to the Intergovernmental Risk Management Act, or any bylaw of the risk management pool. Such hearing may be initiated by the Director of Insurance on his or her own initiative or at the request of the pool's board of directors.

(3) Any member of a risk management pool which voluntarily terminates its membership in the pool or which is involuntarily terminated as a member of the pool shall nevertheless remain liable subsequent to the date of termination for all contractual obligations it has entered into with the pool on or before the date of termination.

Sec. 10. (1) On or before March 1 of each year after a risk management pool has received a certificate of authority as prescribed in section 7 of this act, it shall make and file with the Department of Insurance a report of its affairs and operations during the last preceding calendar year. Such report shall be made in such form and shall contain such information as the Director of Insurance may by rule or regulation prescribe in order to protect the public interest and the interests of the members of the pool. The Director of Insurance may require any individual pool to file additional periodic reports as he or she may find to be reasonably necessary and appropriate to protect and inform members of the pool and the public, to insure solvency of the pool, and to insure fair dealings in the investments of the pool.

(2) The Department of Insurance shall examine the business affairs, records, and assets of each pool once every four years to assure that the pool is financially sound. The Department of Insurance may examine a pool sooner than four years from the preceding examination if the Director of Insurance has reason to believe that the pool is not financially sound. Any examination conducted by the Department of Insurance pursuant to this subsection shall be at the expense of the pool being examined.

Sec. 11. A risk management pool shall not be voluntarily dissolved or otherwise cease to function without written approval by the Director of Insurance after he or she has determined that all claims and other legal obligations of the pool have been paid or that adequate provisions for such payment have been made.

Sec. 12. (1) If the assets of a risk management pool are at any time insufficient to enable the pool to discharge its liabilities and other obligations and to maintain adequate reserves and

surpluses in accordance with reasonable determinations by the Department of Insurance, the pool shall make up the deficiency or the Director of Insurance shall order the pool to levy an assessment upon its members in an amount necessary to make up the deficiency.

(2) If the risk management pool fails to make up a deficiency or to make the required assessment of its members pursuant to subsection (1) of this section within thirty days after the Director of Insurance orders it to do so or if the deficiency is not fully made up within sixty days after the date on which such assessment is made or within such longer period of time as may be specified by the Director of Insurance, the pool shall be proceeded against in the same manner as provided for domestic insurers. The Director of Insurance shall have the same powers, duties, and limitations in such proceeding as are provided for in a proceeding against a domestic insurer.

(3) If the liquidation of a risk management pool is ordered, an assessment shall be levied upon its members for such amount as the Director of Insurance determines is necessary to discharge all liabilities of the pool, including the reasonable costs of liquidation.

Sec. 13. The capital, surplus, and other funds, or any part thereof, of any risk management pool may be invested as authorized for investments by domestic insurance companies in section 44-309.

Sec. 14. The Department of Insurance may, after notice and hearing, adopt and promulgate such reasonable rules and regulations as may be necessary or proper to carry out the provisions of sections 6 to 14, 19, and 20 of this act.

Sec. 15. Notwithstanding any other provision of law to the contrary, (1) any risk management pool organized pursuant to the Intergovernmental Risk Management Act shall not be considered an insurance company or insurer under the laws of this state, (2) any agreement forming a risk management pool or providing group self-insurance coverages to its members shall not constitute insurance or the conduct of an insurance business, and (3) no risk management pool organized pursuant to the Intergovernmental Risk Management Act shall be a member of the Nebraska Property and Liability Insurance Guaranty Association.

Sec. 16. Funds set aside by any public agency for a risk management pool shall not be construed to be a cash reserve or a sinking fund.

Sec. 17. (1) Any public agency which has the authority to levy a tax shall be authorized to levy a

tax, to contract indebtedness, and to issue general obligation bonds payable from such a tax levy to pay the premium costs of general liability insurance, property insurance, workers' compensation insurance, and any other insurance to protect against any of the losses described in section 4 of this act and to pay all costs and expenses associated with membership in a risk management pool, including, but not limited to, standard insurance coverages, group self-insurance coverages, assessments levied by the pool, retirement of debt incurred by the pool, and operating expenses of the pool. A member of a risk management pool which has the authority to levy a tax shall be authorized to enter into agreements obligating the member to make payments beyond its current budget year for any of such purposes. Taxes for the payment of the principal of, premium of, or interest on such a general obligation bond of such public agency, the payment of such insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool may be levied in excess of any tax limitation imposed by statute.

(2) Nothing in the Intergovernmental Risk Management Act shall be construed or interpreted as permitting the State of Nebraska, represented by the Risk Manager, to enter into any agreement or contract or do any act in contravention of the Constitution of the State of Nebraska.

Sec. 18. Information regarding that portion of the funds or liability reserve of a risk management pool established for the purpose of satisfying a specific claim or cause of action shall be exempt from disclosure under sections 84-712 to 84-712.09. Notwithstanding any other provision of law to the contrary, a party to a claim or action against a public agency or any risk management pool shall not be entitled to discover that portion of the funds or liability reserve established by the pool for purposes of satisfying the claim or cause of action, except that such information shall be discoverable in any supplemental or ancillary proceeding to enforce a judgment against a public agency or risk management pool.

Sec. 19. (1) All risk management pools shall comply with the Nebraska Workers' Compensation Act and all rules of the Nebraska Workers' Compensation Court.

(2) The Nebraska Workers' Compensation Court may, as provided by section 48-146.02, revoke or suspend the authority of a risk management pool to provide group

self-insurance coverage of workers' compensation liability pursuant to the Intergovernmental Risk Management Act.

Sec. 20. Every risk management pool shall pay to the Director of Insurance, on or before March 1 of each year, an amount equal to one per cent of the prevailing premium rate which would be paid for all policies of insurance to insure workers' compensation risks and one per cent of annual contributions paid by the pool's members for coverage of all other risks included within the pool's group self-insurance program. The computation of such amount shall be made on forms furnished by the Department of Insurance which shall be filed with the department together with a sworn statement by the pool's chief operating officer attesting to the accuracy of the computation. The department shall furnish such forms to each pool prior to the end of the year for which such amount is payable together with any information relative to computation of the amount as may be necessary. Upon receipt of payment, the director shall audit and examine the computations and satisfy himself or herself that the amount paid is in conformity with this section.

Sec. 21. Subject only to any agreement with the holders of outstanding bonds, a risk management pool may issue such types of bonds as its board may determine, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenue from one or more revenue-producing contracts made by the risk management pool with any person, or from its revenue generally, or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person, by a pledge of any income, revenue, funds, or money of the risk management pool from any source whatsoever, or by a mortgage or security interest in any real or personal property, commodity, or product or any service or interest therein.

Sec. 22. A risk management pool may from time to time issue its bonds in such principal amounts as its board of directors deems necessary to provide sufficient funds to carry out any of the risk management pool's purposes and powers, including the establishment or increase of reserves and the payment of all other costs or expenses of the risk management pool incident to and necessary or convenient to carry out its purposes and powers.

Sec. 23. (1) Neither the members of a risk management pool's board of directors nor any person

executing the bonds shall be liable personally on such bonds by reason of the issuance thereof.

(2) The bonds shall not be a debt, liability, or general obligation of any member of a risk management pool or of this state, and neither this state nor any member of a risk management pool shall be liable thereon. Neither the faith and credit nor the taxing power of any member of a risk management pool or of the state shall be pledged to the payment of the principal or interest on the bonds. Bonds shall be payable only out of any funds or properties of the issuing risk management pool. Such limitations shall be plainly stated upon the face of the bonds.

Sec. 24. Bonds shall be authorized by resolution of the issuing risk management pool's board of directors, may be issued under a resolution or under a trust indenture or other security instrument in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution, trust indenture, or other security instrument may provide and without limitation by the provisions of any other law limiting amounts, maturities, or interest rates. Any officer authorized or designated to sign, countersign, execute, or attest any bond or any coupon may utilize a facsimile signature in lieu of his or her manual signature.

Sec. 25. (1) Except as the issuing risk management pool's board of directors may otherwise provide, any bond and any interest coupons thereto attached shall be fully negotiable within the meaning and for all purposes of Article 8 of the Uniform Commercial Code.

(2) The bonds may be sold at public or private sale as the issuing risk management pool's board of directors may provide and at such price or prices as such board shall determine.

Sec. 26. In case any officers whose signatures appear on any bonds or coupons cease to be such officers before the delivery of such obligations, such signatures shall nevertheless be valid and sufficient for all purposes to the same extent as if such officers had remained in office until such delivery.

Sec. 27. A risk management pool shall have power in connection with the issuance of its bonds:

(1) To covenant as to the use of any or all of its property, real or personal;

(2) To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(3) To covenant to charge or seek necessary approval to charge fees and charges sufficient to meet operating and maintenance expenses of the risk management pool, interest and principal payments, whether at maturity or upon sinking fund redemption, on any outstanding bonds or other indebtedness of the risk management pool, and creation and maintenance of any reasonable reserves therefor and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability or security of the bonds;

(4) To covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived, and as to the consequences of default and the remedies of bondholders;

(5) To covenant as to the mortgage or pledge of or the grant of any other security interest in any real or personal property and all or any part of the revenue from any revenue-producing contract or contracts made by the risk management pool with any person to secure the payment of bonds, subject to such agreements with the holders of outstanding bonds as may then exist;

(6) To covenant as to the custody, collection, securing, investment, and payment of any revenue, assets, money, funds, or property with respect to which the risk management pool may have any rights or interest;

(7) To covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied and the pledge of such proceeds to secure the payment of the bonds;

(8) To covenant as to limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(9) To covenant as to the rank or priority of any bonds with respect to any lien or security;

(10) To covenant as to the procedure by which the terms of any contract with or for the benefit of the

holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(11) To covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(12) To covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the risk management pool may determine;

(13) To covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state;

(14) To make all other covenants and to do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds or in the absolute discretion of the risk management pool as may tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this section; and

(15) To execute all instruments necessary or convenient in the exercise of the powers granted in the Intergovernmental Risk Management Act or in the performance of covenants or duties, which instruments may contain such covenants and provisions as any purchaser of bonds may reasonably require.

Sec. 28. A risk management pool may issue and sell refunding bonds for the purpose of paying or providing for the payment of any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at any time prior to or at the maturity or redemption of the refunded bonds as the risk management pool's board of directors deems appropriate. The refunding bonds may be issued in a principal amount not exceeding an amount sufficient to pay or to provide for the payment of (1) the principal of the bonds being refunded, (2) any redemption premium thereon, (3) interest accrued or to accrue to the first or any subsequent redemption date or dates selected by the risk management pool's board of directors in its discretion, or to the date or dates of maturity, whichever is determined to be most advantageous or convenient for the risk management pool, (4) the expenses of issuing the refunding bonds, including bond discount, and redeeming the bonds being refunded, and (5) such reserves for debt service or other capital or current expenses from the proceeds of such refunding

bonds as may be deemed necessary or convenient by the board of directors of the issuing risk management pool. A determination by the board of directors that any refinancing is advantageous or necessary to the risk management pool, that any of the amounts provided in this section should be included in such refinancing, or that any of the bonds to be refinanced should be called for redemption on the first or any subsequent redemption date or permitted to remain outstanding until their respective dates of maturity shall be conclusive.

Sec. 29. Refunding bonds may be exchanged for and in payment and discharge of any of the outstanding obligations being refunded. The refunding bonds may be exchanged for a like, greater, or smaller principal amount of the bonds being refunded as the issuing risk management pool's board of directors may determine in its discretion. The holder or holders of the bonds being refunded need not pay accrued interest on the refunding bonds if and to the extent that interest is due or accrued and unpaid on the bonds being refunded and to be surrendered.

Sec. 30. To the extent not required for the immediate payment and retirement of the obligations being refunded or for the payment of expenses incurred in connection with such refunding and subject to any agreement with the holders of any outstanding bonds, principal proceeds from the sale of any refunding bonds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded, payment of interest and any redemption premiums, and payment of any expenses incurred in connection with such refunding, but provision may be made for the pledging and disposition of any surplus, including, without limitation, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds. Money in any such trust fund may be invested in direct obligations of or obligations the principal of and interest on which are guaranteed by the United States government, in obligations of any agency or instrumentality of the United States government, or in certificates of deposit issued by a bank or trust company if such certificates are secured by a pledge of any of such obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing in this section shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but which shall not have matured and which are not presently

redeemable or, if presently redeemable, have not been called for redemption.

Sec. 31. The issue of refunding bonds, the manner of sale, maturities, interest rates, form, and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties, and obligations of the risk management pool in respect of the same shall be governed by the Intergovernmental Risk Management Act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Sec. 32. Bonds may be issued under the Intergovernmental Risk Management Act without obtaining the consent of any department, division, commission, board, bureau, or instrumentality of this state and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by the Intergovernmental Risk Management Act, and the validity of and security for any bonds shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions, or things.

Sec. 33. The board of directors of a risk management pool may provide for the publication of any resolution or other proceeding adopted by it pursuant to the Intergovernmental Risk Management Act or, in lieu thereof, a notice of intention to issue bonds in a newspaper of general circulation published in the county where the principal office or place of business of the risk management pool is located or, if no newspaper is so published, then in a newspaper qualified to carry legal notices having general circulation in such county.

Sec. 34. In the case of a resolution or other proceeding providing for the issuance of bonds pursuant to the Intergovernmental Risk Management Act, the board of directors of the risk management pool may, either before or after the adoption of such resolution or other proceeding, in lieu of publishing the entire resolution or other proceeding, publish a notice of intention to issue bonds under the Intergovernmental Risk Management Act, titled as such, containing:

- (1) The name of the risk management pool;
- (2) The purpose of the issue, including a brief description of the project and the names of the public agencies to be serviced by the project;
- (3) The maximum principal amount of bonds to be issued;
- (4) The maturity date or dates and maximum amount maturing on such dates;
- (5) The maximum rate of interest payable on

the bonds; and

(6) The time and place where a copy of the form of the resolution or other proceeding providing for the issuance of the bonds may be examined, which copy shall be at an office of the risk management pool identified in the notice, during regular business hours of the risk management pool as described in the notice, for a period of at least thirty days after the publication of the notice.

Sec. 35. For a period of thirty days after such publication, any person in interest shall have the right to contest the legality of such resolution or proceeding or any bonds which may be authorized thereby, any provisions made for the security and payment of such bonds, any contract of purchase, sale, or lease, or any insurance policy contract, and after such time no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

Sec. 36. Bonds issued pursuant to the Intergovernmental Risk Management Act are hereby made securities in which all public officers and instrumentalities of the state and all political subdivisions, insurance companies, trust companies, banks, savings and loan associations, investment companies, personal representatives, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or instrumentality of this state or any political subdivision for any purpose for which the deposit of bonds or obligations of this state or any political subdivision thereof is now or may hereafter be authorized by law.

Sec. 37. (1) All bonds of a risk management pool are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes.

(2) The property of a risk management pool, including any pro rata share of any property owned by a risk management pool in conjunction with any other person, is declared to be public property of a public agency used for essential public and governmental purposes. Such property and the income of a risk management pool shall be exempt from all taxes of the state or any member of a risk management pool or other public agency and shall be exempt from all special

assessments of any participating member of a risk management pool.

Sec. 38. The State of Nebraska does hereby pledge to and agree with the holders of any bonds and with those parties who may enter into contracts with any risk management pool or member of a risk management pool under the Intergovernmental Risk Management Act that the state will not alter, impair, or limit the rights thereby vested until the bonds, together with applicable interest, are fully met and discharged and such contracts are fully performed. Nothing contained in the act shall preclude such alteration, impairment, or limitation if and when adequate provisions have been made by law for the protection of the holders of the bonds or persons entering into contracts with any risk management pool or member of a risk management pool. Each risk management pool and member of a risk management pool may include this pledge and undertaking for the state in such bonds or contracts.

Sec. 39. The Intergovernmental Risk Management Act, being necessary for the welfare of the state and its inhabitants, shall be construed liberally to effect its purpose.

Sec. 40. That section 23-2413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-2413. The governing body of any political subdivision, including any school district, educational service unit, or technical community college may purchase a policy of liability insurance insuring against all or any part of the liability which might be incurred under this act, and also may purchase insurance covering those claims specifically excepted from the coverage of this act by section 23-2409. Any independent or autonomous board or commission in the political subdivision having authority to disburse funds for a particular purpose of the subdivision without approval of the governing body also may procure liability insurance within the field of its operation. The procurement of insurance shall constitute a waiver of the defense of governmental immunity as to those exceptions listed in section 23-2409 to the extent, and only to the extent, stated in such policy. The existence or lack of insurance shall not be material in the trial of any suit except to the extent necessary to establish any such waiver. Whenever a claim or suit against a political subdivision is covered by liability insurance or by group self-insurance provided by a risk management pool, the provisions of the insurance policy

on defense and settlement or the provisions of the agreement forming the risk management pool and related documents providing for defense and settlement of claims covered under such group self-insurance shall be applicable notwithstanding any inconsistent provisions of this act.

Sec. 41. That section 48-128, Revised Statutes Supplement, 1986, be amended to read as follows:

48-128. If an employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, which is or is likely to be a hindrance or obstacle to his or her obtaining employment or obtaining reemployment if the employee should become unemployed and which was known to the employer prior to the occurrence of a subsequent compensable injury, receives a subsequent compensable injury resulting in additional permanent partial or in permanent total disability so that the degree or percentage of disability caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself; and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability, and for the additional disability the employee shall be compensated out of a special trust fund created for that purpose, which sum so set aside shall be known as the Second Injury Fund. If the subsequent compensable injury of such an employee shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent partial disability, the employer shall pay the compensation benefits prescribed by this section for a period not exceeding three hundred twenty-five weeks and for any compensation benefits payable after such period of three hundred twenty-five weeks, the dependents shall be compensated out of the Second Injury Fund.

In order to qualify under this section, the employer must establish by written records that the employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired, or at the time the employee was retained in employment after the employer acquired such knowledge.

As used in this section, preexisting permanent partial disability shall mean any preexisting permanent

condition, whether congenital or the result of injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition shall be considered a preexisting permanent partial disability under this section unless it would support a rating of twenty-five per cent loss of earning power or more or support a rating which would result in compensation payable for a period of ninety weeks or more for disability for permanent injury as computed under subdivision (3) of section 48-121.

The Second Injury Fund shall be for the purpose of making payments in accordance with this section and for paying administrative expenses relating to such fund. The State Treasurer shall be the custodian of the Second Injury Fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The Second Injury Fund shall be raised and derived from the following source: Every insurance company which is transacting business in this state shall, on or before March 1 of each year, pay to the Director of Insurance an amount equal to one per cent of the gross amount of direct writing premiums received by it during the preceding calendar year for workers' compensation insurance business done in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one per cent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk but in no event less than twenty-five dollars.

The computation of the amounts as provided in this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and risk management pools prior to the end of the year for which the amounts are payable together with any information relative to the amounts as may be needed or desirable. Upon receipt of the payment, the director shall audit and examine the computations and satisfy himself or herself that the amounts have been properly paid in conformity with this section.

The Director of Insurance, after notice and hearing pursuant to Chapter 44, article 23, may rescind or refuse to reissue the license of any company which fails to remit the amounts due in conformity with this section.

The Director of Insurance shall deposit the amounts paid, in conformity with this section, with the State Treasurer for the benefit of the Second Injury Fund promptly upon completion of his or her audit and examination, and in no event later than May 1 of the year in which the amounts have been received, except that when there is a dispute as to the amount payable, the proceeds may not be deposited by the director with the State Treasurer until disposition of the controversy. One per cent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

Every employer in the occupations described in section 48-106 who shall qualify as a self-insurer and who shall be issued a permit to self-insure shall furnish to the State Treasurer for the benefit of the Second Injury Fund an annual amount equal to one per cent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk as provided in this section but in no event less than twenty-five dollars.

The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

The Nebraska Workers' Compensation Court shall be charged with the conservation of the assets of the Second Injury Fund. In furtherance of this purpose the Attorney General shall appoint a member of his or her staff to represent the Second Injury Fund in all proceedings brought to enforce claims for or against the Second Injury Fund.

The State Treasurer, as custodian of the Second Injury Fund, shall furnish monthly to the Nebraska Workers' Compensation Court a statement of such fund setting forth the balance thereof as of the beginning of each month, the income therefrom, and the sources thereof, the payments from such fund in itemized form, and the balance on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United

States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise, by reason of any payment made from the fund.

When the fund shall equal or exceed four hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance carriers, but thereafter whenever the amount of the fund shall be reduced below two hundred thousand dollars, by reason of payments made pursuant to this section, or otherwise, or whenever the Nebraska Workers' Compensation Court shall determine that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below two hundred thousand dollars, the compensation court shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance carriers and risk management pools, that such contributions are forthwith to be resumed as of the date set in such notice and such contributions shall thereafter continue as provided in this section after the effective date of such notice, and such contributions shall thereafter continue until the fund shall again amount to four hundred thousand dollars. Out of the Second Injury Fund, the additional compensation payments shall be made to such employee or dependent by the compensation court once each month in the same manner as the salaries of the employees of the compensation court are paid. In all cases when a claim is asserted by the state on behalf of the Second Injury Fund against an employer, ~~or~~ employer's insurer, or risk management pool under this section, or when a claim is made against the Second Injury Fund, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service of summons shall be had upon the Attorney General. It shall be the duty of the Attorney General to act as attorney for the state.

Any expenses necessarily incurred by the Second Injury Fund or by the Attorney General on behalf of the Second Injury Fund in any case when a claim is asserted by the state on behalf of the Second Injury Fund against an employer, ~~or~~ employer's insurer, or risk management pool under this section, or when a claim is made against the Second Injury Fund, may be paid out of the Second Injury Fund. Such expenses may be taxed as costs and recovered by the Second Injury Fund in any such case in which the Second Injury Fund prevails.

Sec. 42. That section 48-144.02, Revised

Statutes Supplement, 1986, be amended to read as follows:

48-144.02. (1) Whenever any insurance carrier shall write a policy of workers' compensation insurance under the Nebraska Workers' Compensation Act, such carrier shall file a report showing the name and address of the insured employer, the name of the insurance carrier, the policy number, the effective date and expiration date of such policy, and such other information as the Nebraska Workers' Compensation Court may require. Such report shall be filed with the compensation court within ten days of the effective date of such policy.

(2) Whenever any risk management pool is organized or accepts a new member or whenever any member of a risk management pool voluntarily terminates membership or is involuntarily terminated, such pool shall file a report within ten days after any such event with the Nebraska Workers' Compensation Court showing the names and local addresses of its members or the name, local address, and effective date of termination or joinder of any single member.

Sec. 43. That section 48-144.04, Revised Statutes Supplement, 1986, be amended to read as follows:

48-144.04. Any employer, risk management pool, or insurance carrier who fails, neglects, or refuses to file any report required of him or her by the Nebraska Workers' Compensation Court shall be guilty of a Class II misdemeanor for each such failure, neglect, or refusal. It shall be the duty of the Attorney General to act as attorney for the state. In addition to the penalty, where an employer, risk management pool, or insurance carrier has been given notice, or the employer, risk management pool, or the insurance carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file a report thereof, the limitations in sections 48-128 and 48-137 shall not begin to run against the claim of the injured employee or his or her dependents entitled to compensation or against the State of Nebraska on behalf of the Second Injury Fund, or in favor of either the employer, risk management pool, or the insurance carrier until such report shall have been furnished as required by the compensation court.

Sec. 44. That section 48-146, Revised Statutes Supplement, 1986, be amended to read as follows:

48-146. No policy of insurance against

liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 4 of this act providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his or her estate or discharge therein or by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer or risk management pool to the person entitled to compensation enforceable in his or her name. Every policy for the insurance of the compensation herein provided, or against liability thereof, or agreement forming any risk management pool shall be deemed to be made subject to the Nebraska Workers' Compensation Act. No corporation, association, or organization shall enter into any such policy of insurance unless copies of such forms have been filed with and approved by the Department of Insurance. All policies insuring the payment of compensation under the Nebraska Workers' Compensation Act and agreements pursuant to section 4 of this act providing group self-insurance coverage of workers' compensation liability by a risk management pool must contain a clause to the effect (1) that as between the employer and the insurer or risk management pool the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer or risk management pool, (2) that jurisdiction of the insured for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and (3) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such insured. All such policies insuring the payment of compensation and all such agreements providing such group self-insurance coverage shall include within their terms the payment of compensation to all employees, officers, or workers who are within the scope and purview of the Nebraska Workers' Compensation Act.

Sec. 45. That section 48-146.02, Revised

Statutes Supplement, 1986, be amended to read as follows:

48-146.02. (1) If the Nebraska Workers' Compensation Court shall find, after due notice and hearing at which the insurance organization shall be entitled to be heard in person or by counsel and present evidence, that such organization has repeatedly failed to comply with its obligations under the provisions of the Nebraska Workers' Compensation Act, it may request the Director of Insurance to suspend or revoke the authorization of such organization to write workers' compensation insurance under the provisions of Chapter 44 and such act. Such suspension or revocation shall not affect the liability of any such organization under policies in force prior to the suspension or revocation.

(2) If the Nebraska Workers' Compensation Court shall find, after due notice and hearing at which the risk management pool shall be entitled to be heard in person or by counsel and present evidence, that such pool has repeatedly failed to comply with its obligations under the provisions of the Nebraska Workers' Compensation Act, as set out in subsection (1) of section 19 of this act, the compensation court may suspend or revoke the authority of the pool to provide group self-insurance coverage of workers' compensation liability pursuant to the Intergovernmental Risk Management Act. Such suspension or revocation shall not affect the liability of any such risk management pool under the terms of the agreement forming the pool in force prior to the suspension or revocation.

Sec. 46. That section 48-162.02, Revised Statutes Supplement, 1986, be amended to read as follows:

48-162.02. There is hereby created a special trust fund for the purposes set forth in section 48-162.01, which sum so set aside shall be known as the Vocational Rehabilitation Fund.

The Vocational Rehabilitation Fund shall be for the purpose of making payments in accordance with section 48-162.01. The State Treasurer shall be the custodian of the Vocational Rehabilitation Fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The Vocational Rehabilitation Fund shall be raised and derived from the following source: Every insurance company which is transacting business in this state shall, on or before March 1 of each year, pay to the Director of Insurance an amount equal to one per cent of the gross amount of direct

writing premiums received by it during the preceding calendar year for workers' compensation insurance business done in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one per cent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk.

The computation of the amounts as provided in this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and pools prior to the end of the year for which the amounts are payable together with any information relative to the amounts as may be needed or desirable. Upon receipt of the payment, the director shall audit and examine the computations and satisfy himself or herself that the amounts have been properly paid in conformity with this section.

The Director of Insurance, after notice and hearing pursuant to Chapter 44, article 23, may rescind or refuse to reissue the license of any company which fails to remit the amounts due in conformity with this section.

The Director of Insurance shall deposit the amounts paid, in conformity with this section, with the State Treasurer for the benefit of the Vocational Rehabilitation Fund promptly upon completion of his or her audit and examination, and in no event later than May 1 of the year in which the amounts have been received, except that when there is a dispute as to the amount payable, the proceeds may not be deposited by the director with the State Treasurer until disposition of the controversy, and one per cent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

Every employer in the occupations described in section 48-106 who shall qualify as a self-insurer and who shall be issued a permit to self-insure shall furnish to the State Treasurer for the benefit of the Vocational Rehabilitation Fund an annual amount equal to one per cent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk as provided in this section but in no event less than twenty-five dollars.

The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

The Nebraska Workers' Compensation Court shall be charged with the conservation of the assets of the Vocational Rehabilitation Fund. The Attorney General shall appoint a member of his or her staff to represent the Vocational Rehabilitation Fund when necessary.

The State Treasurer, as custodian of the Vocational Rehabilitation Fund, shall furnish monthly to the Nebraska Workers' Compensation Court a statement of such fund setting forth the balance thereof as of the beginning of each month, the income therefrom, and the sources thereof, the payments from such fund in itemized form, and the balance on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

When the fund shall equal or exceed four hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance carriers, but thereafter whenever the amount of the fund shall be reduced below two hundred thousand dollars, by reason of payments made pursuant to this section, or otherwise, or whenever the Nebraska Workers' Compensation Court shall determine that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below two hundred thousand dollars, the compensation court shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance carriers and risk management pools, that such contributions are forthwith to be resumed as of the date set in such notice and such contributions shall thereafter continue as provided in this section after the effective date of such notice, and such contributions shall thereafter continue until the fund shall again amount to four hundred thousand dollars. Out of the Vocational Rehabilitation Fund, payments shall be made in accordance with section 48-162.01 in the same manner as for claims against the state.

Any expenses necessarily incurred by the Vocational Rehabilitation Fund may be paid out of the Vocational Rehabilitation Fund.

Sec. 47. That section 48-178.01, Revised Statutes Supplement, 1986, be amended to read as follows:

48-178.01. Whenever any petition is filed and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer, ~~and~~ a carrier, or a risk management pool or between two or more employers, ~~or~~ carriers, or pools, the Nebraska Workers' Compensation Court may order payment of compensation to be made immediately by one or more of such employers, ~~or~~ carriers, or pools. When the issue is finally resolved, an employer, ~~or~~ carrier, or pool held not liable shall be reimbursed for any such payments by the employer, ~~or~~ carrier, or risk management pool held liable.

Sec. 48. That section 81-8,231, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,231. Whenever a claim or suit against the state or a state agency is covered by liability insurance or by group self-insurance provided by a risk management pool, the provisions of the liability insurance policy on defense and settlement or the provisions of the agreement forming the risk management pool and related documents providing for defense and settlement of claims covered under such group self-insurance shall be applicable notwithstanding any inconsistent provisions of this act. The Attorney General and the State Claims Board shall cooperate with the insurance company or risk management pool.

Sec. 49. That section 81-8,239.01, Revised Statutes Supplement, 1986, be amended to read as follows:

81-8,239.01. (1) As used in sections 44-1615, 44-1616, and 81-8,239.01 to 81-8,239.04, unless the context otherwise requires, the definition of state agencies found in section 81-8,210 shall apply, except that such term shall not include the Board of Regents of the University of Nebraska.

(2) There is hereby established a Risk Management Program for the State of Nebraska, which shall consist of the systematic identification of exposures to risk of loss as provided in this act and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to this act. Such program shall be administered by the

Risk Manager and shall include the operations of the State Claims Board and other operations provided in this act.

(3) Under the Risk Management Program, the Risk Manager shall have the authority and responsibility to:

(a) Employ any personnel necessary to administer the Risk Management Program;

(b) Develop and maintain loss and exposure data on all state property and liability risks;

(c) Develop and recommend risk reduction or elimination programs for the state and its agencies and to establish, implement, and monitor a statewide safety program;

(d) Determine which risk exposures shall be insured and which risk exposures shall be self-insured or assumed by the state;

(e) Establish standards for the purchase of necessary insurance coverage at the lowest costs, consistent with good underwriting practices and sound risk management techniques;

(f) Be the exclusive negotiating and contracting agency to purchase insurance and, after consultation with the state agency for which the insurance is purchased, enter into such contracts of insurance on behalf of the state and its agencies, officials, and employees to the extent deemed necessary and in the best interest of the state, and to authorize payment for such purchase of insurance out of the appropriate funds created by sections 44-1630 and 81-8, 239.02;

(g) Determine whether the state suffered a loss for which self-insured property loss funds have been created and authorize and administer payments for such loss from the State Self-Insured Property Fund for the purpose of replacing or rebuilding state property;

(h) Perform all duties assigned to the Risk Manager under the Nebraska Workers' Compensation Act and sections 11-201 to 11-203, 44-1622, 44-1623, and 44-1630;

(i) Approve the use of risk management pools by any department, agency, board, bureau, commission, or council of the State of Nebraska and the University of Nebraska; and

(j) ~~(i)~~ Recommend to the Legislature such legislation as may be necessary to carry out the purposes of this act; and to make appropriation requests for the administration of the Risk Management Program and the funding of the separate funds administered by

the Risk Manager.

Sec. 50. That original sections 23-2413 and 81-8,231, Reissue Revised Statutes of Nebraska, 1943, and sections 48-128, 48-144.02, 48-144.04, 48-146, 48-146.02, 48-162.02, 48-178.01, and 81-8,239.01, Revised Statutes Supplement, 1986, are repealed.

Sec. 51. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.