



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0793/1
PJK:jld:ph

2013 BILL

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

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations at the recommendation of the office of the commissioner of insurance (OCI).

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

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certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

This bill 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 issued to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund.

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

605.01 (3) “Tribe” means a federally recognized American Indian tribe or band in this state.

SECTION 2. 605.02 (1) (title) of the statutes is amended to read:

605.02 (1) (title) PROPERTY OF LOCAL GOVERNMENTAL UNITS AND TRIBES.

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

605.02 (1) (a) ~~Any~~ Except as provided in par. (b), a local governmental unit or tribe 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 or tribe may not also be insured in any other manner unless the manager certifies that additional insurance is necessary, or unless the local governmental unit or tribe 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.

SECTION 4. 605.02 (1) (b) of the statutes is created to read:

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

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1 **SECTION 5.** 605.02 (2) (intro.), (a), (b) and (c) of the statutes are amended to
2 read:

3 605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY. (intro.) The Subject to sub.
4 (1) (b), the property fund may cover a building or structure specified in sub. (1) (a)
5 that is not owned by a local governmental unit or tribe only if all of the following
6 conditions are met:

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

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

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

13 **SECTION 6.** 605.09 of the statutes is amended to read:

14 605.09 (1) After ~~a lawful vote of the~~ adoption of a resolution under s. 605.21
15 (1) by a local governmental unit, or under s. 605.21 (1m) by a tribe, to insure under
16 this chapter, no such local governmental unit or tribe may pay out any money to any
17 private insurer nor incur any indebtedness against the local governmental unit or
18 tribe to a private insurer for any insurance on any property of the local governmental
19 unit or tribe or for which the local governmental unit or tribe may be legally liable
20 if such insurance is available under this chapter, unless it is approved by the
21 commissioner as necessary ~~or,~~ unless it is insurance on personal property ~~which that~~
22 the local governmental unit or tribe by resolution filed with the commissioner has
23 decided to insure in insurance companies authorized to do business in this state, or,
24 if a tribe, unless it is insurance on property described in s. 605.02 (1) (b).

25 **SECTION 7.** 605.21 (1) of the statutes is amended to read:

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1 605.21 (1) ~~PLACING INSURANCE; LOCAL GOVERNMENTAL UNITS.~~ The property fund
2 shall insure property described in s. 605.02 for a local governmental unit after receipt
3 from the clerk of the local governmental unit of a certified copy of the resolution
4 authorizing insurance in the property fund. The clerk shall report to the manager
5 each policy then in force upon such property, stating the property covered by the
6 policy and the dates of issue and of expiration, the amounts and rates of insurance,
7 and the premiums. Property already insured shall become insured by the property
8 fund as existing policies expire or are canceled. Thereafter the insurance on all
9 property described in s. 605.02 shall be provided. Premiums shall be certified by the
10 manager to the clerk of the appropriate unit.

11 **SECTION 8.** 605.21 (1m) of the statutes is created to read:

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

15 1. Authorizes insurance in the property fund.

16 2. States that the tribe agrees to abide by this chapter and the terms of any
17 policy issued under this chapter and to comply with all directives of the manager and
18 all final decisions under s. 605.23 (2), to the same extent as a local governmental unit,
19 and that the tribe will not raise the defense of sovereign immunity in any action in
20 a court of competent jurisdiction to enforce this chapter, a policy issued under this
21 chapter, a directive of the manager, or a final decision under s. 605.23 (2).

22 3. Designates an administrative officer of the tribe responsible for insurance
23 under the property fund.

24 (b) The administrative officer designated in par. (a) 3. shall report to the
25 manager each policy then in force upon the tribe's property described in s. 605.02,

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

6 **SECTION 9.** 605.21 (2) of the statutes is renumbered 605.21 (2) (a) and amended
7 to read:

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

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

19 **SECTION 10.** 605.21 (2) (c) of the statutes is created to read:

20 605.21 (2) (c) If a premium that is payable by a tribe is more than 90 days past
21 due, the tribe's coverage is suspended. No claim may be paid under the coverage on
22 any loss occurring during the period of suspension. A period of suspension under this
23 paragraph begins on the 91st day after the day on which an unpaid premium was due
24 and ends on the day on which all overdue premium is paid.

25 **SECTION 11.** 605.21 (3) of the statutes is amended to read:

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1 605.21 (3) WITHDRAWAL FROM THE PROPERTY FUND. ~~Any~~ A local governmental
2 unit may ~~terminate its insurance in the property fund,~~ by a majority vote, and ~~upon~~
3 a tribe may, by a resolution of its governing body, terminate its insurance in the
4 property fund. Upon certifying such action to the manager, the insurance in force
5 in the fund shall terminate upon expiration of the policy unless the local
6 governmental unit or tribe specifies an earlier date for termination. In case of
7 removal or sale of property, the ~~board~~ local governmental unit or tribe may terminate
8 the insurance on that property without terminating its entire insurance in the
9 property fund.

10 **SECTION 12.** 605.21 (4) of the statutes is amended to read:

11 605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local
12 governing governmental unit or tribe is insured and premiums therefor for coverage
13 must be paid under this section except to the extent that coverage is excluded under
14 s. 605.02 (1) (b) or by resolution under s. 605.02 (1) (a).

15 **SECTION 13.** 605.23 (1) and (2) of the statutes are amended to read:

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

22 (2) APPRAISAL IN CASE OF DISAGREEMENT. If there is disagreement between the
23 manager and the local governmental unit or tribe as to the amount of the loss or
24 damage to property covered by the property fund, the amount shall be determined
25 by appraisal, upon the demand of the local governmental unit or tribe. The manager

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1 and the claimant shall each select a competent and disinterested appraiser and
2 notify the other of the selection within 20 days of the demand. If either party fails
3 to select an appraiser within the allotted time, the other party may request a court
4 of record to appoint an appraiser. The appraisers shall first select a competent and
5 disinterested umpire. If they do not agree on one within 15 days, then either party
6 may request a judge of a court of record in the county in which the property is located
7 to select a competent and disinterested umpire and the judge shall do so promptly.
8 The appraisers shall then appraise the loss and damage, stating separately the
9 actual cash value or other applicable basis of valuation and the loss or damage to
10 each item. If they fail to agree they shall submit their differences to the umpire. An
11 itemized award in writing of any 2 of the 3 when filed with the manager shall
12 determine the amount of the insured value and of loss or damage. Each appraiser
13 shall be paid by the party selecting that appraiser and any other expenses of
14 appraisal and of the umpire shall be paid by the parties equally.

15 **SECTION 14.** 605.24 (3) of the statutes is amended to read:

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

23 (END)