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11/19/2012

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

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations at 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 certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

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

7       **SECTION 1.** 605.01 (3) of the statutes is created to read:  
8       605.01 (3) "Tribe" means a federally recognized American Indian tribe or band in this  
9       state.

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

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

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

10           605.02 (1) (b) A tribe may not insure a building in which the tribe conducts class II  
11 gaming, as defined in 25 USC 2703 (7), or class III gaming, as defined in 25 USC 2703 (8),  
12 or a hotel, restaurant, convention center, or other facility attached to or associated with such  
13 a building.

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

15           605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY. (intro.) The property fund may  
16 cover a building or structure specified in sub. (1) that is not owned by a local governmental  
17 unit or tribe only if all of the following conditions are met:

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

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

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

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

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

2       605.09 (1) (title) PROPERTY OF LOCAL GOVERNMENTAL UNITS.

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

4       605.09 (2) PROPERTY OF TRIBES. A policy issued to a tribe under this chapter shall be  
5       suspended, and no claim may be paid under the policy on any loss occurring during the period  
6       of suspension, if the tribe pays out any money to any private insurer or incurs any indebtedness  
7       against the tribe to a private insurer for any insurance on any property of the tribe or for which  
8       the tribe may be legally liable if such insurance is available under this chapter, unless one of  
9       the following applies:

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

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

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

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

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

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

2           605.21 **(1m)** PLACING INSURANCE; TRIBES. (a) The property fund shall insure property  
3 described in s. 605.02 for a tribe after receipt from the tribe of a certified copy of a resolution  
4 of the tribe's governing body that does all of the following:

5           1. Authorizes insurance in the property fund.

6           2. States that the tribe agrees to abide by this chapter and the terms of a policy under  
7 this chapter and to comply with all directives of the manager and all decisions an umpire under  
8 s. 605.23 (2), to the same extent that a local governmental unit is required, and that the tribe  
9 will not raise the defense of sovereign immunity in any action in a court of competent  
10 jurisdiction to enforce this chapter, a policy under this chapter, a directive of the manager, or  
11 the decision of an umpire.

12           3. Designates an administrative officer of the tribe responsible for insurance under the  
13 property fund.

14           (b) The administrative officer designated in par. (a) 3. shall report to the manager each  
15 policy then in force upon such property, stating the property covered by the policy and the  
16 dates of issue and of expiration, the amounts and rates of insurance and the premiums.  
17 Property already insured shall become insured by the property fund as existing policies expire  
18 or are canceled. Thereafter, the insurance on all property described in s. 605.02 shall be  
19 provided. Premiums shall be certified by the manager to the clerk of the appropriate unit.

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

22           605.21 **(2)** (a) Upon receipt of certification of premium due, the premium shall be paid  
23 into the state treasury for the benefit of the property fund, within 60 days after the date of  
24 certification or the effective date of the policy, whichever is the later. Premiums for property

1 insured effective at a later date shall be paid within 60 days after the effective date of each  
2 addition.

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

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

9 605.21 (2) (c) If a premium due by a tribe is more than 90 days past due, the policy is  
10 suspended. No claim may be paid under the policy on any loss occurring during a period of  
11 suspension.

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

13 605.21 (3) WITHDRAWAL FROM THE PROPERTY FUND. ~~Any A~~ local governmental unit may  
14 ~~terminate its insurance in the property fund,~~ by a majority vote, and upon a tribe may, by  
15 resolution of its governing body, terminate its insurance in the property fund. Upon certifying  
16 such action to the manager, the insurance in force in the fund shall terminate upon expiration  
17 of the policy unless the local governmental unit or tribe specifies an earlier date for  
18 termination. In case of removal or sale of property, the board may terminate the insurance on  
19 that property without terminating its entire insurance in the property fund.

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

21 605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local  
22 governing unit or tribe is insured and premiums therefor must be paid under this section except  
23 to the extent that coverage is excluded under s. 605.02 (1) (b) or by resolution under s. 605.02  
24 (1) (a).

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

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

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

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

605.24 (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 local governmental unit or tribe 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.

**(END)**