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RISK MANAGER'S INSURANCE GUIDE

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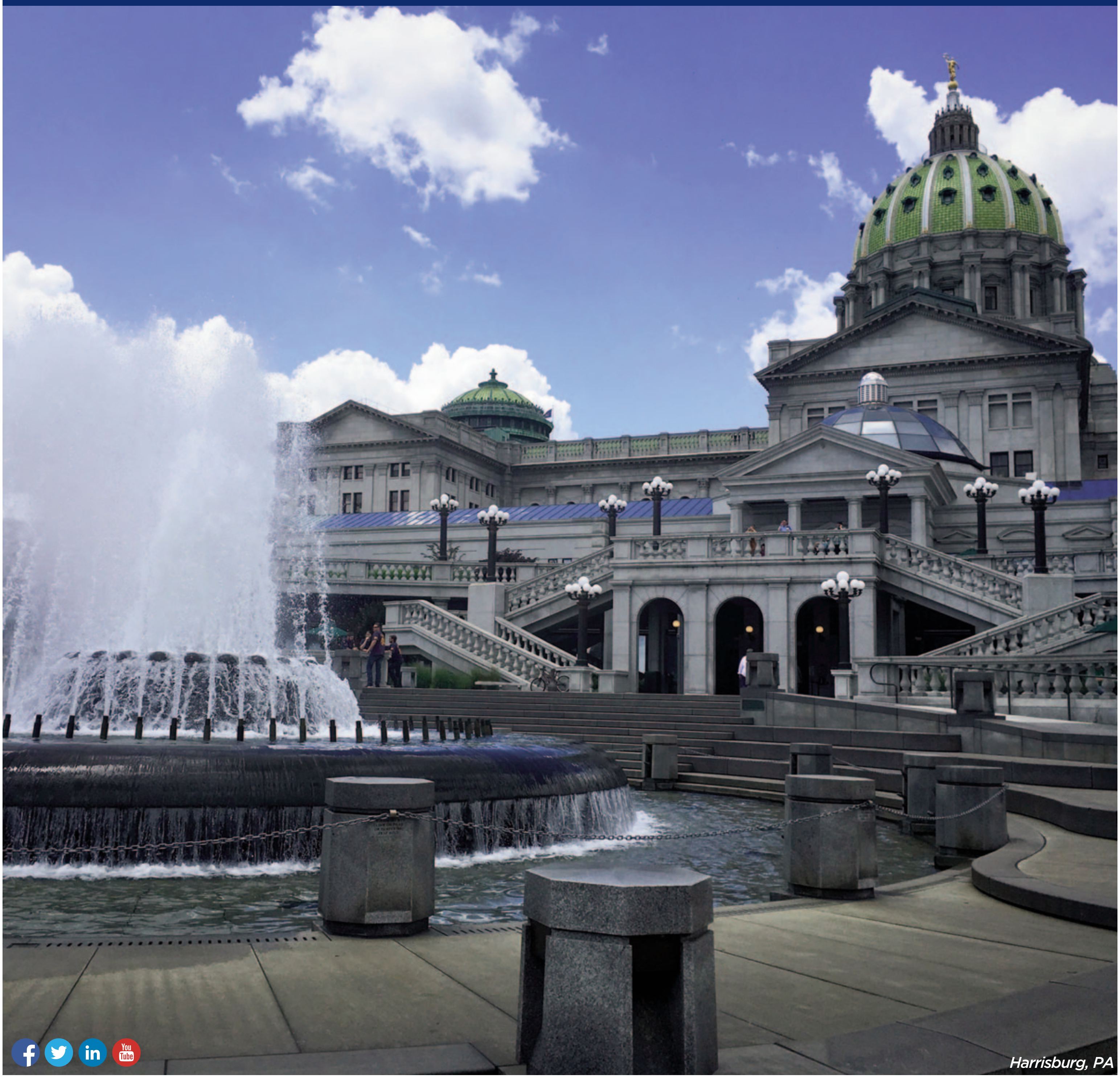

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Foreword

This document offers a brief synopsis of the terminology and generally accepted practices applied in administering a complex insurance program for a Pennsylvania municipality.

For purposes of this publication, "municipality" refers to Pennsylvania boroughs, cities, counties, townships and towns.

To a somewhat lesser degree, this document touches on how to use the risk management process to better control losses. This publication is not a comprehensive, sole-source document. There are numerous other organizations and resources available to the serious student of public risk management, including but not limited to:

- Local insurance producers
- Public entity risk pools and their staff
- Insurance company loss control representatives
- The Public Risk Management Association (PRIMA)
- The Association of Governmental Risk Pools (AGRiP)
- The Risk and Insurance Management Society (RIMS)

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I. Insurance and the Concept of Risk

Risk Management is defined as the process of protecting assets from loss. Risk management works best when it is a fundamental, integral part of ongoing operations, ingrained in what municipal officials do day-in and day-out. Risk management has been called "structured common sense," implying correctly that it is not a complicated process. It does require municipal officials to be cognizant of possible loss exposures as they perform their duties and to be trained on how to address those exposures.

Insurance is a contract between the municipality and an insurer whereby the insurer agrees to indemnify the municipality in the event of a loss, subject to the terms, conditions and limitations of the contract, in exchange for payment of the premium. A typical insurance policy requires the insured to report claims in a timely fashion and to cooperate fully with the insurer during its investigation of the claims.

For third party liability claims, the insurer generally has the authority to decide whether or not to settle with the claimant or to defend the allegations in court. However, per the Pennsylvania Supreme Court decision in *Babcock & Wilcox v. ANI* (July 21, 2015), if the insurer defends pursuant to a reservation of rights and refuses to settle, if the proposed settlement is fair and reasonable the insured may settle without the insurer's consent.

Insurance is only one risk transfer technique available to municipal decision-makers. Municipalities may choose to set aside funds in special reserve accounts and retain the risk, or self-insure. Or they may decide to participate in joint programs with other municipalities, called public entity risk pools.

Participating in a public entity risk pool or purchasing insurance from a commercial insurance company are the most widely used and generally the most cost-effective ways to handle low frequency, high severity losses for small to medium-sized public entities.

This publication is designed to provide an overview of insurance terminology, municipal coverage forms, particular state and federal laws, statutes and case law, and to the degree possible, the risk management process.

Extent of Municipal Liability

Liability Exposures

Prior to the mid-1970s in Pennsylvania, municipalities and their agents enjoyed *sovereign immunity*, an English common law term meaning the "king can do no wrong." In effect, no matter how negligent a municipality was in performance of its duties, claimants had no recourse for recovery. The Pennsylvania Supreme Court overturned this concept in 1973 with *Ayala v Philadelphia Board of Education*. After this ruling, municipalities and municipal officials were held responsible for their acts under the same legal standing as corporations and individuals. This illustrates the importance of orientation and ongoing training in order for public officials and employees to be aware of acting within the scope of their official duties and responsibilities.

About the same time, litigation was beginning to become the preferred method of resolving disputes. As a result, the filing of complaints against public entities began to increase.

In response to pleas from local governments, the Pennsylvania State General Assembly passed the Pennsylvania Political Subdivisions Tort Claims (Governmental Immunity) Act in 1978. The Tort Claims Act (Chapter 85 of the Judicial Code) re-established the concept of governmental immunity except for eight areas, or exceptions to immunity, where a municipality could be held liable. The Act limits or caps damages at a maximum of $500,000 per occurrence for a political subdivision, regardless of the number of plaintiffs. Claimants are required to notify a municipality of a claim within 180 days of the incident, unless physically unable to do so. The statute requires a municipality to defend an official/employee as long as the official/employee acted, or believed he/she acted, in good faith on behalf of the municipality.

As mentioned above, the Act states that no political subdivision shall be liable for any damages on account of any injury to a person or property caused by any act or omission of the political subdivision or an employee except for the specific categories of actions listed below. The eight *exceptions* to governmental immunity in Pennsylvania are:

- Operation of any motor vehicle owned or controlled by the political subdivision including vehicles operated by rail or through water or in the air.
- Care, custody or control of personal property of others by the political subdivision.
- Real property in the care, custody or control of the political subdivision.
- A known dangerous condition of traffic lights, street lights, traffic controls or trees under the care, custody or control of the political subdivision.
- A dangerous condition of steam, water, sewer, electric and gas systems owned by the political subdivision.
- A dangerous condition of streets owned by the political subdivision.
- A dangerous condition of sidewalks owned by the political subdivision if known in sufficient time to have taken corrective action.
- Animals controlled by or in the possession of the political subdivision, including but not limited to police dogs and horses. Wild animals such as bear and deer are not included in this definition.

The Act limits liability to only those defects that the municipality was aware of, or should have known about. Under a pure and simplistic interpretation of the Act, there is no liability for a defect in the roadway if the first notice of the defect was the plaintiff's filing of a claim. If the municipality is unaware of the defect, it cannot be reasonably expected to repair it. However, the Act goes on further to say not only is the municipality responsible for *known defects*, but also for defects about which the municipality *"should have known."* For example, if the municipality's highway superintendent drives to work every day over the road with the defect, or if the municipal police department regularly patrolled the same road, a plaintiff attorney will argue that the municipality "had constructive notice" even though it was not formally reported by a motorist. On the other hand, the Act stipulates that the municipality must have sufficient time to correct any defect and the extent of the corrective measure must be reasonable relative to budgetary considerations.

The municipality may be held secondarily liable in certain circumstance. Exception number 7, the sidewalk exception, stipulates that a municipality is secondarily liable for sidewalks owned by others. The municipality is responsible for notifying the property owner of a defect and seeing that the defect is corrected in order to protect the public. Also, courts have held that municipalities should notify property owners of sight distance problems created at intersections by overgrowth of foliage. Failure to notify residents of a dangerous condition on their property could carry liability if the condition existed with the knowledge of the municipality. Knowledge could mean the condition was on a street routinely patrolled by police or passed by other employees of the municipality.

The Tort Claims Act also limits the municipality's financial obligation to any uninsured portion of the loss. If a motorist is involved in a vehicle accident with a municipal vehicle, he or she is required under the Act to report the loss to his or her personal auto insurer. If the municipality were found to be liable for the accident, the municipality's auto liability insurer would reimburse the motorist only for his or her deductible or for the uninsured portion of the loss. The motorist's personal auto insurer pays for any loss above the deductible.

The important thing to remember is to respond to problems and known defects quickly and to document when the municipality becomes aware of any defect. A good complaint intake and tracking system *(see Appendix VIII)* can help tremendously in defending cases with little or no merit.

Defense counsel assigned to defend the public entity in litigation greatly appreciate records, time-lines and particularly photographs. Photos really are worth a thousand words.

Recent Pennsylvania court decisions are holding municipalities responsible for notifying PENNDOT of traffic control problems where state highways and municipal roadways intersect. If you know of an intersection where there have been numerous accidents, and an upgrade in traffic control may be justified (e.g. from two to four way stop, adding a traffic signal, restricting left turns), notify PENNDOT in writing and ask them to perform a traffic study. Follow-up with the Department on a regular basis.

Questions occasionally arise about the liability of repairing a dangerous condition such as a pothole in a state highway or county road. If you know of a dangerous condition, notifying the proper agency is essential. If the defect creates a serious hazard, you should warn the motorists of the condition with cones or even consider closing the road. If you decide to warn the motorists or go as far as to repair the defect in another agency's road, you may be held responsible for negligently warning or negligently making the repairs.

For more details on how applicable case law has re-defined the eight exceptions over the years, be sure to contact your solicitor or your public entity risk pool's or insurance company's defense counsel.

A final note on immunity. A separate statute, the Pennsylvania Recreational Land Use Act of 1968, confers immunity to any property owner who makes their land available to the public for recreational use free of charge, provided the real estate is unimproved land.

For several reasons, municipalities should not rely on the damage cap as a reasonable barometer for setting their insurance limits of liability. In addition to suits brought in state courts, municipalities are also subject to legal actions under federal laws. Federal judgments against the municipalities and their public officials are not limited to the state cap of $500,000. Therefore, in order to be adequately protected, a municipality needs to purchase higher limits than the state cap.

On this same subject, case law in the past has stipulated that delay damages may be awarded on the full award by the jury, not just the reduced or molded cap limit. These delay damages which are awarded to the plaintiff based on loss of interest earnings for the time it took to resolve the matter in the Commonwealth's court system, are *in addition* to the cap limit. Delay damages on the full jury award plus compensatory damages could result in the total award exceeding the $500,000 cap by several hundred thousand dollars. A Pennsylvania Supreme Court case struck down the practice of awarding delay damages against the full jury verdict. In *Allen v Pennsylvania Department of Transportation*, the Pennsylvania Supreme Court ruled that delay damages should only be assessed against the capped damages rather than the entire jury verdict.

Municipalities and public officials involved in litigation in the U.S. Federal court system or administrative law system will discover plaintiffs typically alleging some constitutional violation of their civil rights. Cases may involve wrongful discharge or disciplining of an employee, zoning land use issues, discrimination in hiring or awarding contracts for service, licensing, restrictive ordinances and deprivation of due process. The best advice is to get legal advice *before* taking action that may result in a federal complaint. A labor attorney is a good source of advice on any personnel matter. Ask yourself if your actions are justifiable and defensible. Always document conversations and follow legal advice.

Employment practices liability is a major area of litigation in federal court today. Employees are aware about their rights under Federal anti-discrimination statutes.

When considering taking a personnel action:

- Establish grounds for disciplinary action, with good documentation.
- Use progressive discipline and be patient.
- Document all discussions with the employee, performance reviews and warnings.
- Ask employees to acknowledge, in writing, receipt of performance reviews.
- Seek advice of experts.

Federal actions may be brought for alleged violations of federal statutes (e.g. the Family Medical Leave Act, Equal Employment Opportunity laws, including age or disability, etc.) or for allegations of civil rights violations under the following amendments to the U.S. Constitution:

First – Freedom of speech, religion and the press.

Fourth – Freedom from unlawful search and seizure.

Fifth – Right against self-incrimination.

Sixth – Right to counsel and fair trial.

Eighth – Right to reasonable bail, no cruel and unusual punishments.

Fourteenth – Guarantee of due process of law and equal protection of laws.

For any federal allegations, seek the advice of attorneys familiar with defending federal court cases. Attorneys assigned to defend municipalities in federal cases by risk pools or insurers are good sources of advice and counsel. Regularly attending training programs offered by risk pools, law firms, municipal associations and insurers is a good way to stay on top of changing case law and liability exposures in general.

It is not necessary for the municipal professional to become well versed in the inner workings of a complex insurance program, but some familiarity is helpful. More importantly, how you manage the municipal assets under your control will have a direct bearing on losses paid by the insurer and ultimately on the premium paid by the public entity.

II. Types of Municipal Insurance

A typical municipal insurance package includes the following policies:

General Liability – provides legal defense and indemnification for claims filed by third parties alleging bodily injury or property damage caused by the negligent condition of the premises, operations or products of the municipality.

Automobile Liability – provides legal defense and indemnification for the negligent use of a licensed motor vehicle.

Automobile Physical Damage – provides collision and comprehensive coverage for damage to automobiles owned by your organization.

Cyber Liability Insurance – a relatively new coverage, designed to cover a variety of both liability and property losses that may result when an entity engages in various electronic activities, such as maintaining personal data within its internal electronic network.

Equipment Breakdown – previously called Boiler & Machinery insurance, this provides coverage for mechanical failure of boilers, machinery, electrical and air conditioning equipment, and also provides inspection services for any boilers or other equipment as required by state law.

Public Officials Liability – provides coverage for damages (other than property damage and bodily injury) caused by the wrongful acts of public officials acting within the scope of their official duties. This coverage form also typically provides coverage for employment practices liability.

Law Enforcement Liability – provides liability coverage for the professional exposures associated with providing law enforcement services, including police, sheriff's office, probation, parole and operations of jails and prisons.

Property – provides coverage for first party (municipal owned) real and personal property losses.

Workers' Compensation – provides no-fault coverage for employees injured within the scope of their employment. Benefits include payment of medical costs and lost wages. Also covers work-related diseases.

Crime – provides coverage for the organization's money and securities lost as a result of fraud, criminal activity or embezzlement, and also provides faithful performance coverage.

Employee Benefits – a variety of insurance coverages offered to employees and their dependents as part of an employment package. Examples include health insurance, life insurance, dental insurance, vision insurance, short and long term disability.

Property Insurance

Buildings and Contents. A property policy provides coverage for real (other than land) and personal property owned by the municipality. The property insurance policy should include an up-to-date list and current valuations of all municipal-owned buildings and contents. Perils should be insured on "All Risk" basis and replacement cost new coverage should apply to all buildings and contents.

Property insurance is written on a "location" basis. If a property location is not shown on the policy, the site may not be insured. Consider adding automatic coverage for newly-acquired property, subject to a maximum limit if reported within 90 days. Furthermore, if municipal-owned property (including records) is stored offsite and away from an insured location, the policy will need to address coverage for property off premises.

A coinsurance clause may be included in this type of policy as a negative incentive for the insured to inadvertently under-report property values to the insurer. If the property values are understated, the coinsurance percentage (usually 80 or 90 percent) will be used to reduce the amount paid in the event of a loss. In effect, the municipality will be partially self-funding the loss. It is important to keep property values current when coinsurance is used. This can be done inexpensively through an appraisal service or through the municipal engineer.

Some insurers offer inflation guard protection to automatically increase property values with each renewal based upon cost indexing. Another option is to insure the property on an agreed amount basis. In exchange for the additional premium, the insurer will pay full replacement cost up to the agreed amount of value for each building and its contents that were damaged or destroyed.

Earthquake and Flood Coverage. A typical property policy excludes losses caused by these two high-risk perils, in effect resulting in the perhaps unintentional assumption of these risks by the property owner. Both flood and "quake" losses fall into the low frequency, high severity loss category—risks that are recommended by most risk managers for transfer to insurers. Optional flood and quake coverage, perhaps with sub-limits and higher deductibles, may be available from the municipality's property insurer for an additional premium. Another source of flood coverage, for the municipality and its residents alike, is the National Flood Insurance Program. In order for residents to secure coverage, local governments must adopt floodplain management measures by ordinance in order to permit property owners to be eligible for federally subsidized flood insurance.

Inland Marine. This policy provides coverage for mobile equipment, such as off-the road, unlicensed contractor's equipment. Equipment covered includes items such as street sweepers, graders, portable welders, backhoes and portable radios. (The term "inland marine" emanates from the very broad coverages typically found in marine policies covering goods shipped overseas. Inland marine extends the same coverage to land-based mobile property.)

Equipment Breakdown. This coverage insures against loss to a building and contents due to explosion of boilers or pressure vessels and broad coverage for mechanical failure of machinery, electrical and air conditioning equipment (other than for wear and tear). This type of policy carries an inspection service by the insurer that is both beneficial to the municipality and the insurer. Coverage should be on a repair or replacement basis, not actual cash value.

Time Element Property Coverage. Property losses related to the passage of time may be insured. The coverage not only addresses how much coverage may be required but also for how long. Be sure to review these exposures with your broker or agent. Examples include:

- *Business Interruption* provides coverage, during a pre-determined period of time, for a loss of net income and continuing expenses after a business suffers a covered peril.
- *Extra Expense* coverage pays for added expenses required as a part of a property loss, such as renting temporary office space or storage space, while the municipal facility is being repaired after a covered loss.
- *Electronic Media* provides business interruption coverage caused by the loss of EDP records.
- *Accounts Receivable and Valuable Papers* provides coverage for the added cost of reconstructing important records lost or destroyed as a result of a covered loss.

Builders Risk. This policy is required if the municipality is constructing a new building. The policy may be provided by the contractor as stipulated in the specifications or by the owner's (the municipality's) insurer. Builders risk is a "bridge" policy providing coverage for the loss of a partially constructed building. The contractor should be responsible for insuring the materials stored on-site that he or she owns, which will ultimately be used in the construction. The owner will not begin insuring the building until the owner accepts title to the finished product. Without Builders Risk coverage, a loss of the materials used in the construction may amount to a substantial uninsured exposure as the building nears completion.

Auto Insurance. Whether a municipality operates one vehicle or a fleet of vehicles, auto insurance is a necessity. The policy provides liability coverage (bodily injury and property damage) and first party auto physical damage coverage (collision and comprehensive). The named insureds should include the municipality and its elected and appointed officials and employees. (Act 6 of 1990 that reformed the Motor Vehicle Financial Responsibility Law in Pennsylvania applies only to private passenger vehicles and not to vehicles owned and operated by municipalities.)

Coverage should be extended to include hired and non-owned vehicles thereby protecting the municipality when an employee uses a personal vehicle on official business or leases or rents a vehicle. For non-owned coverage, the employee's personal auto coverage is primary in the event of a loss and the municipality's coverage would be excess of the personal insurance.

If the municipality insures fire, ambulance, and police vehicles, it is advisable to consider an emergency equipment endorsement covering the various types of customized emergency equipment installed on emergency vehicles. Normally, coverage is not extended under the business auto policy for equipment not permanently attached to the vehicle. Consider adding language such as "snow plow, spreader when attached to the vehicle" or make sure the equipment is covered under an inland marine policy.

Liability (Casualty) Insurance

General Liability. This policy protects the municipality, its boards, commissions, officials, employees and volunteers from third party actions alleging bodily injury, property damage and personal injury resulting from the operations of the municipality or the ownership of its premises. Slips or falls by the public visiting a municipal building is a typical premise-type claim covered by a General Liability policy. The policy, originally limited to premises when first issued hundreds of years ago, has been expanded to include operations, completed operations, products, incidental medical payments, host liquor liability and fire legal liability. It also extends coverage to personal and advertising injury exposures such as libel and slander. Contractual liability is provided for liability assumed by the municipality under a contract, subject to the terms and conditions of the policy.

The General Liability policy will typically exclude police operations, employment practices and wrongful acts by public officials, necessitating municipalities to purchase one, two or three additional liability policies.

Public Officials Liability. Sometimes called E & O Insurance (Errors and Omissions), this insurance provides coverage for damages caused by the alleged "wrongful acts" of public officials. Its private sector counterpart is Directors and Officers (D & O) coverage. It excludes coverage for property damage and bodily injury. Claims usually arise from decisions made by elected or appointed officials that allegedly cause loss of revenue, a loss of a property right, licensing, free speech, privacy and alleged constitutional violations, and may include planning and zoning issues (they are sometimes excluded). This policy usually provides coverage for employment related liability - actions related to the hiring and firing of employees and discrimination in employment.

Suggested minimum coverage is $1 - 3 million with a reasonable, affordable deductible which may range from $1,000 to $10,000 depending upon the size of the municipality and its ability to pay.

Law Enforcement Liability. Any municipality providing police service needs to purchase this coverage. This insurance provides coverage for alleged violations of civil rights caused directly or indirectly by a police force. Allegations typically include false arrest, false imprisonment, wrongful entry, excessive force, pursuits, property damage, personal injury (verbal abuse), bodily injury (physical), errors and omissions, humiliation, civil rights violations, denial of medical treatment, prisoners' claims and impounded property. A typical minimum limit is $1 million with a deductible of $1,000 or $10,000, depending upon the size of the municipality and its ability to pay.

Cyber Liability Insurance. This relatively new type of insurance is designed to cover a variety of both liability and property losses that may result when an entity engages in various electronic activities, such as selling on the internet or collecting data within its internal electronic network.

Most notably, but not exclusively, cyber and privacy policies cover an entity's liability for a data breach in which the municipality's employees or customers' personal information, such as Social Security or credit card numbers, is exposed or stolen by a hacker or other criminal who has gained access to the municipality's electronic network. The policies cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft.

In addition, the policies cover liability arising from website media content, as well as property exposures from: business interruption, data loss/destruction, computer fraud, funds transfer loss, and cyber extortion.

Umbrella or Excess Insurance. These are two different types of policies. An umbrella or excess liability policy sits atop the municipality's underlying policy(ies), extending limits and/or enhancing coverage. Many times, the terms are improperly used interchangeably.

The typical excess policy extends limits of the general liability, automobile liability and employers liability (Part B of the workers' compensation policy) policies, usually in blocks of $1 million. An excess policy responds only when the underlying per occurrence or aggregate limits are exhausted. An excess policy that identically matches the terms and conditions of the underlying policies, without additional exclusions or conditions, is said to "follow form."

An umbrella policy, in addition to extending limits of coverage, may offer coverage enhancements on a "first dollar" basis. In effect, the umbrella insurer, for these broader coverages only, will "drop down" and act as a primary insurer.

Therefore, as a way to illustrate the proper use of the two terms: all umbrella policies are excess policies, but not all excess policies are umbrella policies!

Crime Coverage and Public Officials Bonds

These are two different kinds of coverage, one is insurance, and the other is bonding. The two are often confused or incorrectly referred to as interchangeable.

Public officials bonds guarantee the honesty and the faithful performance of elected and appointed officials. Bonds are not two-party insurance contracts but contracts of suretyships involving three parties. The principal or obligor (the public employee) is required to perform in a certain manner to the satisfaction of the obligee or creditor (the public employer). The surety (bonding company), in exchange for the premium, guarantees that the principal will fulfill the requirements of the obligee. This is not a contract of insurance. If the principal – the public employee – does not perform their obligation (for example, steals or loses the money they are entrusted with), the bond will pay the obligee (the municipality) for the lost funds, BUT the bond company then has the right, and will pursue it, to recover the funds from the public employee. A bond does not insure the employee, it protects the municipality.

With insurance, the insurer is responsible to the insured, it pays losses on the insured's behalf and typically does not subrogate against its own insured for recovery of any loss. With a surety bond, the surety is responsible only to the obligee, does not expect to pay losses for the obligor and fully expects recovery from the principal. As an analogy, a surety is like a co-signer of a loan. Some position bonds are required by the municipal codes or statutes, such as tax collectors and treasurers. Other officials responsible for handling money may be required to be bonded by local ordinance, including the municipal secretary, the chief elected official and certain clerical staff. As a guide, the amount of bond should equal the maximum amount of cash, checks and securities under the control of the official at any one time.

A fidelity or honesty bond deals solely with the honesty of the principal. A faithful performance bond generally covers both honesty and faithful performance of duties. A blanket bond is a single bond written to cover numerous officials or employees. This type of bond would pay any loss by any employee covered under the blanket protection.

Crime insurance provides the same ability to recover costs when an embezzlement or other loss of money occurs. Crime insurance addresses the most common fidelity threats, including losses due to employee dishonesty, credit card forgery, computer fraud and theft and disappearance and destruction of property.

Claims Made versus Occurrence Coverage

Insurance policies can be written using one of two types of coverage clauses which define what triggers claims coverage based on the date of the claim and the policy year of the insurance policy: Claims Made or Occurrence.

A Claims Made policy provides coverage that is triggered when a claim is made against the insured during the policy period, regardless of when the wrongful act that gave rise to the claim took place. Most professional, errors and omissions (E&O), directors and officers (D&O), and employment practices liability insurance (EPLI) is written as Claims Made policies.

An Occurrence policy covers claims that arise out of damage or injury that took place during the policy period, regardless of when claims are made. Most commercial general liability (CGL) insurance and property insurance is written on an occurrence form.

The key concept for risk management is to understand that there may be a difference between the date of a wrongful act which creates a claim, and the date the municipality knows about the claim and when the municipality reports the claim to their insurer.

For example, a property claim, which is usually insured by an occurrence policy, is pretty simple. Generally the municipality will know when damage to their property occurs, and this is usually reported pretty quickly. If the municipality has a property insurance policy from ABC risk pool which runs from January 1 through December 31, 2015, and a storm damages the municipal building on January 5, 2015 and is reported the next day, the property insurance policy from ABC risk pool will respond.

Let's assume the municipality changed insurers and became a member of ABC risk pool on January 1, 2015 and had been insured with XYZ insurance company. If the storm damage on January 4, 2015 were reported to XYZ insurance company, they would deny the claim, as the damage did not happen during their coverage period (all of 2014).

And if the municipality was very tardy in reporting the claim to ABC risk pool, and did not do so until January of 2016, it would still be covered because the event happened during the ABC risk pool policy's coverage year. (There might be some issues with reporting requirements, but that is another matter.)

Lawsuits are more complicated. It is not unusual for a municipality to be sued a year or more after an event happens, and in the interim have no idea a lawsuit is coming. Let's say the municipality terminated an employee on July 1, 2013. In April 2015 the employee sues the municipality for discrimination, alleging they were fired because they were female. The municipality had its E & O insurance from XYZ company through the end of 2014, and then moved it to ABC risk pool January 1, 2015. Both policies are Claims Made. Which will respond?

The ABC risk pool will respond, because the claim was reported during the time their policy was in effect, even though the event that the claim is based upon happened prior to the time the risk pool's policy was in place.

Claims Made retroactive date: Generally a claims made policy will not extend coverage back to the dawn of time. Most risk pools and insurance companies will want to establish a retroactive date, indicating how far back their coverage extends.

What to watch for when you change from one form to the other:

When changing from Claims Made to Occurrence form, you need to consider either buying tail coverage from the Claims Made carrier (this would extend coverage for prior events which happened prior to the new Occurrence carrier's policy) or buy retroactive date coverage from the new Occurrence carrier. Usually the insurer you are moving to is more willing to provide the option, and sometimes at very little cost when compared to the carrier you are leaving.

When changing from Occurrence to Claims Made form, you don't need to make any special arrangements, unless you have claims you know about and have not reported to the Occurrence based insurer. The Claims Made carrier is not going to pick up any of those claims you knew about before moving to the Claims Made policy.

It is a good idea to review with any new insurer the claims you currently have open, and consider who is going to continue the work on those claims. Some insurers will ask you to attest that there are no other "known losses" which you have not informed the new insurer about.

Employee Benefits

Workers' Compensation

Although typically considered a benefit, workers' compensation coverage actually had its roots in liability coverage. In the early 1900s, the only recourse for employees injured on the job was to file a lawsuit against his or her employer and prove negligence, a difficult threshold to achieve. Workers' compensation coverage was offered as a litigation reform measure or compromise: employers agreed to provide mandatory no-fault coverage to employees injured within the scope of their employment, and employees relinquished their right to sue their employers. Benefits include payment of medical costs and lost wages and the coverage was amended in later years to include work-related diseases. Act 115 of 2001 included hepatitis C as an occupational disease covered by workers' compensation for the occupations of fire, police and emergency service personnel.

Furthermore, boroughs, townships, cities and towns are required to provide workers' compensation coverage to the following volunteers if the company or corps is domiciled within their boundaries:

1. Volunteer Fire Fighters
2. Volunteer Ambulance Corps
3. Volunteer Fire Police
4. Volunteer Special School Police
5. Volunteer Rescue and Lifesaving Squad
6. Volunteer HazMat Team

Police and other law enforcement officers involved in undercover drug task force operations sponsored by the state Attorney General's office should be covered for workers' compensation by the Commonwealth for injuries or illnesses resulting from these operations.

Occasionally, volunteer ambulance or fire companies create paid positions. The municipal workers' compensation insurer does not provide coverage for paid employees of volunteer fire or ambulance companies. Under the Act, the employer is responsible for providing workers' compensation coverage and the volunteer company would be required to purchase separate coverage for its employees.

Workers' compensation provides a wage loss benefit of up to 66 2/3% of the injured worker's normal wage, subject to any statutory minimum and maximum weekly wage.

In the case of paid police, firefighters and park guards who are *temporarily* disabled as a result of an on-the-job injury, the municipality is obligated to pay the balance of salary (33 1/3%) out of their own funds under the Heart and Lung Act (Act 477 of 1935). Municipalities may decide to purchase optional disability insurance to cover this added risk, or they may opt to retain the risk and make the payment out of an appropriate payroll account.

Unemployment Compensation

Unemployment compensation insurance provides coverage when unemployment compensation is owed a former employee or employees. State law requires Pennsylvania local governments to fund this financial obligation using one of two methods: contributory insurance or by reimbursement.

Most municipalities are reimbursers, electing to repay the state for benefits paid to their former employees. Pennsylvania's associations for boroughs, townships, cities, counties and schools have all created group unemployment compensation insurance risk pools, which charge the members annual rates for coverage, and then reimburse the state on behalf of the pool's members.

Contributory employers opt to pay a quarterly fixed charge to the Commonwealth for coverage. The rate is set as a percentage of payroll. The advantage of this method is that the payment is relatively easy to predict. The disadvantage is that it can be an unnecessary expense for an organization with little or no turnover.

Only municipal governments and nonprofit agencies are permitted to choose the reimbursement option, to reimburse the unemployment compensation fund for claims paid in its behalf. If a municipality decides to self-insure this exposure, it should establish a reserve account or fund as a way to pre-fund the liability in the event of a claim or series of claims. If the municipality is forced to lay off employees for economic reasons, the total reimbursement costs could be substantial and poorly timed.

In all cases, the Commonwealth of Pennsylvania's, Bureau of Employment Security determines who is and is not eligible for unemployment compensation benefits. The Commonwealth also sets the amount to be paid in benefits. The method chosen (contributory or reimbursement) should be based on solid analysis of past loss experience and informed, conservative projections about future economic circumstances.

Health Insurance

Health insurance is an employee benefit provided by the municipality to its employees and sometimes to their dependents. Typically, it provides payment for hospitalization, outpatient medical services, ancillary medical services and prescription drug costs. Employees may be expected to share in the costs either with co-pays, deductibles or contributions towards the premium. Several plan types may be offered:

HMO: Typically, the option with the most controls and lowest costs (managed care). Limits access to specialists. Subscribers are required to first seek treatment from a pre-selected primary care physician (PCP). The PCP controls access to specialists through a referral. Specialists used by the PCP for referrals are generally part of a small network offering steep discounts. Employees only pay a very low co-pay for PCP office visits and visits to referred specialists.

Point of Service (POS): Still a managed care environment, but offering some out-of-network coverage for an employee who seeks treatment without a referral from a PCP.

Preferred Provider Organization (PPO): A non-managed care product that is a hybrid between the expensive traditional indemnity coverage and an HMO. Offers lower co-pay incentives to stay within a PPO network of physicians, but provides out-of-network coverage without referrals.

Indemnity Plan: The modern day evolution of the traditional "hospitalization and medical/surgical" product originated by Blue Cross and Blue Shield in the 1930s. It allows the broadest access to hospitals, physicians and specialists, subject to the payment of co-insurance requirements and the satisfaction of annual individual / family deductibles. Generally, this product is being phased out due to high costs caused by high utilization, and to a certain degree, by the popularity of the new low co-pay options.

Short and Long Term Disability/Group Life

Group health, life and disability insurance may be considered personal risk management tools. Although it may be preferential to simply choose to avoid getting sick as the risk control technique, when it comes to illness, in all likelihood, several risk financing methods may also be needed. The financial consequences of an extended illness may be extraordinary. Besides the medical bills for hospitalization and physician services (see Health Insurance above), the loss of income of a family member may adversely affect the family's lifestyle and livelihood.

Short and long term disability coverage provide a percentage of the income loss resulting from a non-occupational injury or illness. Typically, short term provides coverage from a few days after the loss up to six months. Long term picks up at 6 months and continues for several years. The benefit is a percentage of regular pay that may vary from 50 to 75 percent. Short and long term insurers will medically monitor diagnosis, prognosis and may suggest alternative employment if the disability is more specific to a particular occupation than it is permanently disabling.

Many municipalities self-fund short term coverage by allowing employees to accrue full or partially paid sick leave. If the municipality allows unlimited accrual of sick leave, this might limit the need for short and long-term disability insurance to the first few years of employment, until such time that an employee accrues enough sick leave to fully cover most short and long-term disabilities. Too often, employees overlook the importance of maintaining a good sick leave balance, choosing instead to use sick leave as if it were additional paid days off.

Most municipalities provide life insurance in a specific dollar amount or as a percentage of salary. The amount offered through a group life policy is not enough to fully provide for the needs of one's dependents. It is advisable to consult a financial planner in regards to adequacy of coverage.

III. Public Risk Management

A public risk manager may insist that this Primer be written in reverse order. The first few chapters were written with an implied emphasis on the importance of insurance administration, not risk management. Risk management is an in-depth process, and purchasing insurance is just one step in the process of selecting a risk financing technique.

At the outset, try to imagine how your municipality might perform its duties differently if insurance were not available. Although many public entities are already conducting their affairs in a highly professional manner, an even more heightened level of concern and attention might be the end result of an imaginary world of no insurance. Perhaps the organization might discover a new incentive to aggressively manage risk with a concentrated focus on loss control.

By following the risk management process and applying certain techniques, the frequency and severity of accidents can be reduced. The risk management process applies the scientific problem-solving model to protecting assets:

1. Identifying assets subject to potential loss.
2. Analyzing risk exposures.
3. Examining alternative techniques for dealing with the exposure.
4. Selecting the most promising technique.
5. Implementing the selected technique.
6. Monitoring the results to see if the exposure has been dealt with effectively.

1. Identifying Assets and Loss Exposures

Public risk managers use many tools to identify assets and how those assets are exposed to potential loss. Examples of these identification tools include:

- General observations
- Personal inspections and site visits
- Claim forms and accident reports
- Checklists
- Inventory
- Surveys and questionnaires
- Financial records and budget information
- Records, files and archives
- Complaint forms from citizens *(see Appendix D)*
- Minutes of board meetings
- Interviews
- Experts

There are five main categories of risk exposures for public entities:

- Physical Property
- Loss of Income
- Contingent Expenses
- Human Resources
- Legal Liability

All of these assets can be exposed to perils that may result in a total or partial loss. The art of risk management is to make sure all assets have been identified and then to find ways to counteract identifiable perils. Perils include: acts of nature, human acts, property losses, indirect exposures and third party liabilities.

As an example, let us identify what could happen to a major public facility. It could be subject to loss because it is a building: collapse, corrosion, explosion, fire, obsolescence, failure of environmental controls (heat or air conditioning). It could be subject to loss because of acts of nature: land movement (earthquake, erosion, landslide), water damage (flood, sewer backups, sprinkler system), windstorm (tornado, hurricane), lightning or falling objects. The building may also be subject to loss caused by human acts (vandalism, arson, civil disorder, accidents). A contractor could slip on grease in one of the bays and sue to recover for his or her injuries (liability).

The final peril - losses of income and additional expenses or expediting expenses - are often overlooked. A municipality could rely on water revenue receipts to pay capital costs financed through bonded debt. Perhaps revenue from swimming pool receipts is essential to keeping the facility open. What would happen if the revenue stream were interrupted? How long could you continue to operate? These indirect exposures typically have a time element associated with the loss. The exposure is measured in how long you could operate without an asset, what additional expenses are needed to continue operating in at least a limited manner and what expenses are needed to expedite a fast return to normal operations.

The municipal workforce is an important asset but subject to any number of exposures including injuries both on and off the job, physical illnesses, mental illness and death. Employees can decide not to show up for work or they could find other employment. Studies have shown that good personnel management does make a difference in loss experience. One study looked at pairs of companies, similar in work force size, geographical sector and industrial operation, but dissimilar only in that one pair had half as many work place injuries as its counterpart. The study found eight reasons for the substantially lower loss rates:

1. Greater management concern and involvement in safety matters.
2. More open, informal communication between workers and management.
3. Tidier work areas, better ventilation, better lighting and less noise.
4. Work force comprised of older, married workers, with longer service and less absenteeism and less turnover.
5. More understanding of the use and effectiveness of measures other than suspensions and dismissals when safety rules were violated. More emphasis is on placed coaching and counseling.
6. Greater availability of recreational facilities for workers during off-hours.
7. Greater efforts to involve worker families in safety campaigns and awareness, both on and off the job.
8. Well defined selection, placement and job advancement procedures with opportunities for training and developing new skills.

How are the entity's financial assets subject to potential loss? Financial assets may be threatened by human acts, for example: employee dishonesty, burglary, robbery and fraud. Today, litigation through third party actions is a major concern of public officials (allegations of negligence, products liability, personal injury, contractual liability, auto liability, property of others in your care custody and control).

Risk identification is an ongoing process. To help, the *Appendix VI* includes copies of a peril and exposure survey form.

2. Analyzing Risk Exposures

After identifying assets and how these assets are exposed to loss, it is now appropriate to begin to analyze the risks. Notice that that the Perils and Exposures Survey form found in *Appendix VI* has a series of columns for you to evaluate the degree of expected loss frequency and expected loss severity. This is a worthwhile exercise to help you identify appropriate risk control and risk financing techniques. Frequency is how often an event is likely to occur and severity is the level of hardship created by the loss. Grids with high and low frequency on one axis and high and low severity on the other axis can help pinpoint using both measures. A risk manager will apply much different risk control and risk financing techniques to a high frequency/low severity risk than to a low frequency/high severity. *Appendix II* also contains a loss analysis grid, which may be a helpful tool to identify patterns in your municipality's five-year loss history.

Examples of high frequency/low severity risk are minor auto accidents or medical-only workers' compensation claims. Financially, these types of claims are both affordable and fairly predictable. Low frequency/high severity claims, such a major property damage to a municipal building, are intermittent and costly.

3. Examining Alternative Techniques

The next step in the risk management process is to examine alternative techniques to address the exposures. There are two main methods of managing risk: risk control and risk financing techniques.

The primary risk control measures are:

- Avoidance
- Prevention
- Reduction
- Separation
- Duplication
- Contractual Risk Transfer

Avoidance is the most effective risk control measure. If elected officials decide not to offer municipal police services, they have avoided the risks associated with operating a police department. These exposures include third-party liability claims resulting from allegations of false arrest or abuse of force and workers' compensation costs associated with a high-cost payroll classification, among others. Deciding whether or not to set-up a water utility or to offer refuse collection services or to build a skateboard park are other examples. Considerations include: the claims resulting from failure to supply or the effectiveness of the water treatment, the higher frequency and severity of workers' compensation costs for refuse workers and the likelihood of injury from a youth-oriented sport.

Some argue that this is not true risk avoidance, claiming other agencies or businesses will need to offer the public safety, public health or recreational services if you do not. They argue that is actually a non-contractual risk transfer to another organization. In any event, the important concept is that avoidance of risk for your organization is a very effective method of controlling risk.

The next most effective technique is *prevention*. If the policy makers decide to offer a municipal refuse collection service, avoidance is no longer a viable risk control option. The focus now shifts to preventing a loss from occurring. Public works employees can be trained how to lift properly and how to stay in good physical condition in order to avoid back injuries. Training programs on how to safely operate the vehicle in and out of traffic, how to safely work in traffic, how to travel on the back of the packer, and even how to deal with irate citizens to prevent a liability claim all may help prevent losses. Maintaining the equipment properly to prevent a malfunction that may lead to downtime, more extensive damage and injuries to workers and others are preventive measures.

If it is impossible to avoid the exposure or if the preventive measures fail, the next approach focuses on containing the effect of a loss. Reduction addresses the severity of the loss. Seat belts are a loss reduction device. Seat belts do nothing to prevent the accident itself, but once the accident occurs, they are very effective in lessening the injuries to the driver and passengers. A sprinkler system or fireproof filing cabinets are other examples of risk reduction measures. Personal protective equipment such as gloves, safety shoes, eye protection, hard hats and back braces are loss reduction measures.

Managers must guard against becoming too complacent about the effectiveness of personal protective equipment. It is easy to overlook the injuries that did not occur because of luck or good fortune (the "near miss"). Part of first line management's responsibility is to be cognizant of when preventive and reduction measures work. Remind workers and top management of instances when the hardhat absorbed the shock of a falling object, or the safety shoe protected the foot from a "struck against" injury, or the worn-out gloves protected hands from sharp objects or the reflective safety vest allowed motorists to see a highway worker.

Risk control does not stop with an accident. Training on how to conduct oneself at the scene of a vehicle accident, how to report an accident and how to care for those who are injured can help keep a small accident from becoming a large loss. A sample Accident Investigation Form and Driving Record Form are provided in Appendix III and IV. Consider taking photographs after the accident to record how the scene looked at the time. Post-accident work is an essential loss reduction technique. Planning for post-loss by videotaping or taking photos of buildings and contents *before* the loss can help provide proof of assets to insurance adjusters.

Another risk control device that may have applications in selected circumstances is *separation*. Divided highways and keeping flammable materials away from sources of ignition are two very different examples of applying separation to control risk. Similarly, duplication may help prevent a loss or reduce its impact. A backup of a computer system is a good example of duplication. An example of using both duplication and separation is to house the backup offsite. The files were duplicated with the backup and, as a further protection, the files were separated from the computer site in case the building housing the system suffered a loss.

Finally, *contractual risk transfer* is a technique that is fairly involved and requires expert legal help. The intent is to transfer your operations to another organization and to specify that the other organization is to manage the operation as if they were the owner. For example, a municipality may own a small airport, but may not wish to obtain the expertise or staff-up to a level needed to operate the airport. The municipality may opt to contract with a fixed base operator to manage the airport and assume all of the aviation risks of the owner. This technique should not be confused with financial risk transfer that is addressed later in this publication.

Besides testing for significance using frequency and severity, a risk manager also will need to consider the objectives of the organization in choosing appropriate risk control and risk financing techniques. For example, the policy of the organization may be that under no circumstances is the public works garage ever to be out-of-service. A strong organizational objective like this, heavily impacts on the risk management operation. To meet this forceful of an objective, management will need to consider a number of factors including 24-hour security, liquidity of emergency funds, computer backups and hardware support, dedicated telephone lines, power generators, time element insurance coverage, emergency lighting, building construction materials, on-site fire suppression systems, etc.

Risk Financing

Besides risk control, the risk manager must also apply a risk financing technique. Risk managers apply at least one risk control technique and one risk financing technique to an exposure—usually more. The primary risk financing measures are:

- Transfer
  - Insurance
  - Financial Risk Transfer
- Retention
- Risk Sharing

As outlined above, insurance is the most widely used risk financing technique for small to medium-sized public entities. Insurance is a contract between your municipality and a public entity risk pool or commercial insurer where the insurer agrees to indemnify the municipality in the event of a loss-subject to the terms, conditions and limitations of the contract in exchange for payment of the premium. A typical insurance policy requires the insured to report claims in a timely fashion and to cooperate fully with the insurer during its investigation of the claims. For third party liability claims, generally the insurer has the authority to decide whether or not to settle with the claimant or to defend the allegations in court (see prior note concerning the *Babcock & Wilcox v. ANI* Pennsylvania Supreme Court Case).

Financial risk transfer requires another party in a contract to assume and finance the municipality's risk under the contract. This is handled by adding a hold harmless clause to the contract *(see Appendix V and IX)*, by specifying what type and how much *insurance* the other party needs and by requiring your public entity to be *named as an additional insured* to their policy. When the municipality hires a contractor to repave a street, the public officials do not want to be in a position of defending and paying liability claims emanating from the repaving work simply because the municipality owns the street. The contractor should agree to insulate the municipality from claims resulting from their work by agreeing to defend and indemnify the municipality in the event of a claim, but agreeing to assume this risk is not enough. The contractor must show proof of financial responsibility to support the hold harmless clause. The contractor's agent will issue a *certificate of insurance* showing proof of coverage. The certificate should show the public entity named as an additional insured to fully protect your interests.

Insurance is not the only way to finance risk. In fact, it is generally regarded to be the most expensive risk financing alternative, but in most circumstances, also the most effective. A municipality may choose to retain risk. The term *self-insurance* is commonly used interchangeably with *risk retention* even though the term is somewhat of a misnomer. It is always the public entity's risk, unless it chooses to transfer the risk to another party like an insurer. Since insurance refers to a method of transferring risk, self-insurance improperly implies a transfer of risk to oneself.

The term *self-insurance* does help to distinguish a pro-active risk management approach from *non-insurance or uninsured.* The term *non- or un*-insured infers that a risk was overlooked and unbudgeted requiring the municipality to pay for a loss out of fund balances without the opportunity to plan for the expense. *Risk retention, self-funding* and *self-insurance* all imply a concerted effort to pre-fund losses using a dedicated risk management fund or account. Choosing the reimbursable method of paying unemployment insurance is a decision to self-fund the risk. On a larger scale, municipalities rarely buy property insurance to cover infrastructure such as streets, highways, bridges and underground utility systems. The pricing is usually cost prohibitive and the exposure to loss is different from most buildings, upon which property insurance premiums are typically based. The risk financing technique typically applied to underground infrastructure is capital planning and capital financing using bonded debt. This further illustrates the importance of following the risk management process. Although insurance will continue to be the primary risk financing technique applied by Pennsylvania municipalities, other methods are at times not only more cost effective, but also better.

Deductibles are a type of self-funding, although technically the risk has been transferred to the insurer. Since it is expensive for insurers to process and pay small claims, they will offer premium discounts to insureds who are willing to assume smaller losses. For some coverage lines, insurers insist on deductibles because of the uncertain nature of the risk. The special municipal lines of Law Enforcement Liability and Public Officials Liability usually are written with deductibles of a few thousand dollars.

A broad commitment to risk retention should not be undertaken without first preparing a feasibility study and pro forma financial statements, generally with the help of a competent, independent consulting firm. Limited self-funding, such as establishing a fund to pre-fund higher deductibles, can be undertaken with a simple cost benefit analysis. If the municipality's loss history has been above average and the premium savings from assuming the higher deductible would eventually pay for the expected losses over a reasonable amount of time, limited risk retention may be a viable option. Generally, municipalities should limit retained risk to low frequency/low severity, or to a lesser extent, high frequency/low severity types of exposures. These risks generally include auto physical damage claims, incidental medical costs (first aid) under workers' compensation and glass breakage property losses.

Under current Pennsylvania law, municipalities must apply for permission from the Pennsylvania Bureau of Workers' Compensation before self-funding workers' compensation. Also, the Department of Transportation's Bureau of Motor Vehicles will need to approve your self-funded status if you decide to self-fund auto liability and/or auto physical damage.

Public Entity Risk Pools

Public Entity Risk Pooling is the single most successful example of inter-local cooperation in North America and beyond, saving billions of taxpayer dollars and thousands of lives. Beginning in earnest some 30 years ago, it is a success story that grew organically from the inability and unwillingness of much of the traditional insurance industry to understand and address the changing risk dynamics of governmental entities.

Today, the Association of Governmental Risk Pools (AGRiP) estimates that 80 percent of the cities, towns, schools, counties and special districts in the U. S. address some or all of their risk management and risk financing needs through these member-owned, member-governed, non-profit pools.

There are approximately 450 public entity risk pools in the U.S., with several reinsurance pools in operation which reinsure catastrophic losses for, and are owned by, public entity risk pools.

While each pool is unique, most share certain key characteristics:

- Intergovernmental risk pools are formed under state-specific legislation allowing for joint "pooling" of resources to address risks ranging from property loss to employee benefits, tort liability, workers compensation, and more.
- Pools are owned and governed collectively by their member entities, who share in the costs and savings that derive from their activity.
- They are non-profit and mission-driven, with the goal of improving safety and reducing risk and its related cost. This provides budgetary stability and predictability for the member entities and, ultimately, their constituents and taxpayers.

There are a number of municipal liability and workers' compensation pools operating in Pennsylvania today. Groups of municipalities have united to form public entity risk pools through state associations and intergovernmental agreements.

Pooling is authorized by the Pennsylvania Workers' Compensation Act as amended, the Political Subdivision Tort Claims (Governmental Immunity) Act and Act 180 of 1972, the Intergovernmental Cooperation Act. Workers' compensation risk pools are regulated by the Department of Labor and Industry's Bureau of Workers' Compensation.

Pools offer the advantages of risk retention to small and medium-sized public entities. The municipal member transfers the risk to the pool and simultaneously becomes a part owner and trustee of the pool and its operations. Some pools also are able to insure larger municipalities.

The advantages to retaining risk, either collectively through pools or by self-funding, include:

- Saving the costs of insurance company overhead, profit and taxes that are a part of the premium charged by insurers.
- The pool or self-insurer retains investment income, not the insurer.
- Control of the disposition of claims and lawsuits.
- Instilling incentives for adopting aggressive loss control measures and providing the technical support.
- A public orientation and tailored coverages to meet unique municipal needs.
- A continuity of coverage-market stability when the availability and affordability of commercial insurance may be constrained.
- Instead of excess funds going to the stockholders of an insurance company, the members of the risk pool own the assets, and may receive dividends, grants and additional services from the pool.

The disadvantages can be:

- Funding integrity for reserves and other liabilities must be guaranteed.
- Pools may be assessable, and if additional money is needed to stay solvent, each member must pay its fair share.
- With liability pools in Pennsylvania, a lack of regulatory oversight, requiring the municipality seeking membership to perform their own financial review and due diligence.
- Long term commitment may be required of the participant.

The next steps in the risk management process require little in the way of explanation. An example will suffice. Just to recap, the remaining steps are:

4. Selecting the most promising technique.
5. Complementing the selected technique.
6. Monitoring the results to see if the exposure has been dealt with efficiently.

For the sake of illustration, we will illustrate these final steps using a simple example. We will manage the exposure created by a municipality leasing equipment for highway construction and assuming the risk through a lease. Generally, risk managers apply at least one sometimes more, risk financing technique and one risk control technique to handle an exposure. In this case, the risk financing technique will be insurance. The first step is to make sure the municipality's insurance producer adds this rented vehicle to the vehicle inventory for the period of time it will be used. In fact, the owner will insist on seeing proof of coverage through a certificate of insurance issued by your agent and being named as an additional insured to your policy. The owner wants to make sure that his or her liability as the owner of the vehicle will be covered by the municipality's insurer. An applied risk control technique would be making sure only a qualified operator uses the equipment and that the equipment will be used only for its intended purpose. Special controls to protect it after hours should be considered.

After the leased vehicle is returned, evaluate how well the risk financing and risk control techniques worked. It may be necessary to do more to control the public at the construction site the next time because of some "close calls." Or, perhaps training a backup operator in case the primary operator becomes ill during the term of the lease. Generally, there are always fine-tuning steps that can be implemented to lessen the likelihood of loss.

It is a good idea to establish performance standards. Results standards are measurable end results, such as a certain number of fewer vehicle accidents after initiating new safety measures. Activity standards measure the activities to reaching a desired goal such as the number of inspections conducted at the playground by parks maintenance staff. As loss exposures change, methods need to change.

Category	Example	Loss Control Measure
1. Loss of or to municipal property	Building, furniture equipment, cash, records	Building security, fire alarms, fireproof file cabinets, building inspections, protection from flammables
2. Loss of income generating capacity	Rentals, tax records, utility facilities, fee generating operations	Training programs, accounts receivable insurance, preventative maintenance inspections of facilities
3. Liability to others through bodily injury or property damage	Slips, falls, potholes civil rights violations, wrongful acts, concealed stop signs underground fuel tanks	Complaint response forms, training programs, police pursuit and deadly force policies, tactics training, stress training, vehicle inspections, sexual harassment training
4. Contractual Liability	Contracting procedures renting property, civic centers	Hold harmless clauses, certificates of insurance, use of solicitor
5. Workforce loss	Accidents on the job or job-related illnesses or diseases	Worker safety programs, incentives, control of hazardous substances, issuing personal protective equipment

Organizing a Risk Management Program

After completing the process, you can begin to address how best to organize a risk management program within a municipality. A good first step is to *appoint a risk manager*. More municipalities are hiring full time risk managers, recognizing the large amount of work and continual monitoring risk management requires. Some are choosing to add risk management duties to an existing employee's job description, effectively creating a part time risk manager.

The point is, if there is no person to be the central responsibility for risk management, a unified program will not be achieved, and important matters will fall through the cracks.

Often an administrative support person within the municipality is assigned the duties of monitoring claims, speaking with loss control and insurance experts about applying loss control measures and coordinating with the insurance policy administration requirements.

Safety organizations like the National Safety Council consider supervisors to be a key component to any effective loss control program. Supervisors are responsible for the job site and therefore responsible for assuring that the job is done correctly and safely. Supervisors must understand that a safe worksite is their responsibility. Establishing common procedures addressing safety rules, accident reporting, emergency actions, contingency plans, compliance with state standards and laws, maintenance schedules and personnel administration are essential.

A *policy statement* is another step to consider. A policy statement establishes guidelines for the municipality's risk management program and addresses the municipality's risk management objectives, the authority of the risk manager, what to do in the event of an accident, and how and what records need to be maintained.

Most importantly, the policy statement shows that those responsible for the management of the municipality take safety and risk management seriously.

A *safety committee* can help implement safety policy and safety rules. It can be given specific assignments like developing a regular inspection program, establishing an orientation program for new employees or setting up a schedule of ongoing training programs. The committee should include line supervisors, key staff members and administrators.

Some jurisdictions have organized an *accident review board* to help investigate why accidents occur. (This could also be done by the safety committee.) The purpose of the review board is not to find fault but to fact find. The board reconstructs accidents through an independent review of the events and by interviewing witnesses and participants. The goal is to identify ways to prevent similar accidents from occurring. Your risk pool, insurer or insurance producer can help you with the setup.

Vehicle accidents continue to rank among the highest types of accidents within any public entity - highest in both frequency and severity. The solution is to train and manage. Monitor the accidents of your drivers, paying particularly close attention to frequency. Eventually a large number of small accidents will lead to a large loss if some measures are not taken to correct the trend. The same is true with workers' compensation claims. Safety engineers have determined statistically that if an act is performed incorrectly 500 to 600 times, even with no visible damage, it will eventually lead to 30 to 100 minor claims of injuries and one serious accident or disabling injury. Monitoring frequency is a very important loss control device. Regarding vehicular training, make it a practice to send drivers to *defensive driving classes* at least once every three years, more often if accident frequency demands it.

IV. Purchasing Insurance Coverage

The various municipal codes in Pennsylvania allow officials full discretion in deciding how best to obtain insurance coverage. Purchasing insurance is expressly exempted from all competitive bidding requirements. The municipality has the choice of buying insurance through a negotiation or in a more competitive environment. As mentioned above, municipalities may also choose to participate in a public entity risk pool, or when and if appropriate, retain risk (self-fund).

It has been said that purchasing insurance may be one of the most important and simultaneously one of the most complex tasks that must be performed by public officials. What makes it difficult, to a certain extent, is the very nature of the insurance market and how coverage is bought and sold. Too often, public officials express dissatisfaction with the whole experience, noting difficulties such as:

- Even though using one or more reputable local producers, occasionally a doubt remains about how competitive the purchasing process is.
- The cost of insurance seems to vary greatly from one year to the next for no apparent reason.
- If and when some degree of competition is injected into the renewal process, it seems to result in less stability.

Producer Selection

Insurance producers are authorized to provide quotes for a number of insurance companies. Producers may be compensated by a commission when the premium is paid by the insured. Increasingly, producers and public entities are agreeing on flat fee for services agreements to remove the commission structure from impacting the decision about companies to use or coverages to purchase.

Some producers and insurance companies develop market niches by writing a large amount of certain types of insurance for businesses.

Considering the above, as a buyer of insurance, what characteristics would you as a public official like to see as part of your insurance program? Consider:

- Solid, financially strong insurance companies or public entity risk pools.
- Coverage designed around your municipal exposures and needs.
- A well-established, professional producer with access to a number of insurers interested in writing and retaining municipal business.
- Pricing predictablility.

Those close to the insurance industry contend that long-term relationships among insureds, producers and insurers are beneficial, especially during "hard" or "tight" markets. Insurance pricing and availability typically fluctuate along a five to ten year business cycle. At the trough in the market, prices are low, insurance availability is high, competition for premium dollars is heightened, coverages are broad. These are some of the characteristics of a "soft" market. At the peak of the cycle, premiums are high, coverage is narrowed, and availability is greatly constricted. A hard market will show signs of increasing premium, insurers withdrawing from writing municipal business, lower limits and restrictions in coverage through more exclusions. It is this market characteristic of insurance as a "commodity" that makes purchasing and shopping insurance difficult. The current market cycle needs to be a consideration. Many times, stability in a market-driven environment may be more of an important issue than cost.

Finally, overshopping or bidding insurance too often may have a less than desired effect. If insurance underwriters prepare quotes too often without being awarded the business, they may be more reluctant to prepare quotes in the future and decline to quote.

Perhaps your municipality is content with its current program. Perhaps your producer has represented your municipality's interest well in the marketplace, shopping your program only when necessary and at the right time. Furthermore, perhaps you have a longstanding relationship with a public entity risk pool, or one insurance company, weathering one or more major market shifts. Even if satisfied, make it a habit to meet with your insurance producer at least once a year to review coverages and assets (fleet inventory, building locations), answer any questions, discuss market trends and review loss history.

For some municipalities, the opposite may be true. What steps should you follow to shop your entire insurance program?

First you may have to select the local insurance producer to assist you with the process. A Producer Questionnaire *(see Appendix VII)* can help you select insurance producers in your area using qualitative standards.

It is important to note that not all lines of insurance require the participation of an insurance producer. Depending on the expertise of your risk manager and other municipal employees, you may be able to purchase coverage without the use of a local producer. Health insurance and unemployment compensation insurance are good examples.

You can also gather less formal information by requesting an agency biography to help in the analysis and selection process. The goal of the biography and questionnaire is to find the agency or agencies who will professionally represent your interests in the insurance marketplace, who have access to a number of insurers interested in municipal business and who are themselves familiar with municipal risks. Agency selection should begin not less than nine months in advance of the renewal date.

After completing the producer selection process, if you decide one producer meets your needs, the next steps in shopping coverage are relatively straightforward. You begin the work with the agency of preparing specifications about your municipality for insurance underwriters to use in preparing a quote. Some Pennsylvania municipalities have hired risk consultants or brokers to help with the technical aspects of marketing the insurance program. The municipality directly pays the consultant or broker a negotiated fee to recommend agencies, assign insurance markets (see below) and to review proposals submitted by insurers.

If your municipality has historically placed coverage through two or more producers, you may want to consider using two or more producer to more broadly represent your interests in the market. This may complicate the process by requiring one more step--assigning markets. Both agents may want to approach these insurers to secure a quote for coverage. Unfortunately, underwriters will respond only to one submission—only one producer can represent your interest. The insurer will ask you to issue a "broker of record letter," indicating which agency the municipality wants to receive the underwriter's quote. You assign insurers to agencies. It is always preferable to address this conflict up-front, rather than delay the underwriting process after the underwriter receives two sets of specs.

In the past, there were many insurance companies interested in writing municipal insurance, and assigning markets was frequently used. It was not unheard of to receive 15 proposals for insurance. Today there are many less insurers interested in municipal business, so assigning markets makes little sense. It is rare for a producer to not be able to obtain a proposal from an insurer. It is far better for the municipality to first identify the producer they wish to handle their search for insurance coverage, and then let that producer work with all those interested in writing coverage for the municipality. This is also a major reason for considering a flat fee for the producer, as the municipality should not be worried about whether one of the companies or public entity risk pools offering a higher commission to the producer. A flat fee ensurers the producer's emphasis will be on obtaining the best coverage and pricing for the municipality, while ensuring the producer is paid the appropriate fee.

Specifications

Your municipality now must prepare a description of your risk for underwriters to review. After a brief cover letter generally describing the intent of the process, you may want to consider a four-part format:

Part I. General Requirements
Part II. Insurance Specifications
Part III. Municipal Profile
Part IV. Appendices

Part I. General Requirements.

In this section, consider:

- The municipality reserves the right to accept or reject any or all proposals or portions thereof.
- The information contained is to be considered reasonably accurate and up to date, but it is not to be considered as a warranty.
- How to set up appointments to inspect municipal facilities.
- Who to contact with requests for additional information or clarification of the specs.
- A timetable for the process and a deadline for responding to the specs.
- Qualifications of insurers (measures of financial strength, number of years writing your type of municipal business, etc.) and public entity risk pools.
- Number of signed responses and copies requested.
- Requiring a submission of specimen policies.

Part II. Insurance Specifications.

Named Insureds. A complete description of all requested Named Insureds including the municipality, all appointed boards and commissions, all appointed and elected officials, all employees and all volunteers acting on behalf of the municipality. The municipality reserves the right to request additional named insureds during the policy term. Make sure you receive a copy of the definition of "Named Insured" in the policy to see what is covered.

Cancellation and Non-renewal. Minimum notification each party will provide to the other.

Effective Date and Term of Coverage

Rating Plans: Whether or not the municipality wants to consider retrospective or loss sensitive rating plans.

Specific Requirements by Coverage Line

Optional Coverage Quotes

Part III. Municipal Profile

The more information you can provide about your municipality, the more accurate the underwriting. This description should include:

- Location within the Commonwealth and any unique characteristics.
- Services provided.
- Elected officials.
- Financial data.
- Descriptions of facilities, miles of streets/roads, acres of parks, size of jail, number of law enforcement officers, payroll.
- Values for owned buildings and contents, with listing and description (age, type of construction and any information on fire detection and suppression).
- Detailed vehicle and equipment list, including a breakdown of emergency vehicles, 911 equipment and towers, mobile equipment.
- Number employees (full and part-time).
- Number of law enforcement employees (full and part-time).
- Description of any enterprise operations such as water, sewer and electric utilities, nursing home, recycling center, transportation services.
- Services such as recreation programs, health services and code enforcement, zoning, land use planning.
- List of boards, commissions and authorities you want included in the coverage.

Part IV. Appendices

- Claims data, including number and type of insurance claims filed within the past five years, incurred and paid costs.
- Copies of operating budget and/or independent financial audits.

V. Glossary

Actual Cash Value. The value of a property loss equal to replacement cost less depreciation for previous use and age.

Aggregate Limit. The maximum amount an insurer will pay annually during the policy term.

All Risk Property Insurance. Covers all perils except those specifically excluded in the policy.

Attractive Nuisance. Any potentially hazardous item or place that by its very nature allures the public, especially children (example: private swimming pools).

Blanket. Covers more than one item or person on the same policy.

Bond. A form of money guarantee or protection against financial loss caused by dishonest acts or nonfaithful performance of duties.

Captive Insurance Company. An insurance company that has as its primary purpose the financing of the risks of its owners or participants. Typically licensed under special purpose insurer laws and operated under a different regulatory system than commercial insurers. The intention of such special purpose licensing laws and regulations is that the captive provides insurance to sophisticated insureds that require less policyholder protection than the general public.

Claims-Made Form. Provides coverage only for "claims made" during the policy period regardless of when the injury or damage took place. Once the policy expires, no claim will be honored unless "tail" or "nose" coverage is purchased. The policy form typically further limits coverage with the use of a retroactive date. This form is typically limited in its use to specialty coverage forms such as Public Officials (Errors and Omissions).

Coinsurance. A policy provision reducing the amount recoverable for a property loss due to the understatement of the property values by the property owner.

Commission. A percentage of the premium paid to a producer for the successful sale of an insurance policy.

Deductible. Amount of each claim or occurrence paid by the insured.

Depreciation. Decrease in the value of property over a period of time due to ordinary wear and tear and/or age.

Direct Writers. An insurer that deals with its insureds without the use of agents or brokers or producers.

Endorsement. An amendment to a policy which revises the original terms or conditions of the policy.

Errors and Omissions Insurance. Insures against loss due to an unintentional mistake or omission in performance of official duties.

Excess Insurance. A policy or bond covering the insured against certain hazards and applying only to loss or damage in excess of a stated amount or specified primary or self-insurance.

Exclusion. A peril or situation not covered by an insurance policy.

First Dollar Coverage. A policy with no deductible and no retention.

Frequency. The number of times a loss occurs in a certain period of time.

Hazard. A situation or condition that increases the probability of a loss occurring from a certain peril.

Hold Harmless Clause/Agreement. A provision within a contract under which one party agrees to assume legal liability for the other party for specified losses as respects the contract.

Indemnification. One party pledges financial assets to another as security or protection against loss or damage.

Liability. A requirement to pay a damage award due to a failure to fulfill an obligation or duty.

Limit of Liability. The maximum amount an insurer agrees to pay in the event of a covered loss.

Manuscript Form. A non-standard policy form drafted specifically to address an insured's specific requirements.

Occurrence Form Policy. A policy form that provides coverage for a loss event that occurred during the time the policy was in effect, regardless of when the claim is presented. Coverage would still apply even if the policy had expired, as long as the loss event took place during the policy period.

Package. A compilation of a number of different policy forms, combined together by one insurer, using similar policy terms and conditions.

Pennsylvania Workers' Compensation Rating Bureau (PCRB). An independent organization created by law to develop workers' compensation loss costs and rates for the insurance industry, using different payroll classifications.

Peril. Possible causes of a loss to an asset such as windstorm, fire, collision or theft.

Personal Injury. An alleged injury resulting from false arrest, malicious prosecution, wrongful entry, libel, slander, false arrest or a violation of a right of privacy. A broad injury classification that typically excludes bodily injury and property damage losses.

Personal Property. Anything subject to ownership other than real property. Examples include: furniture, equipment, supplies, inventory, machinery, vehicles, copyrights, patents, trademarks, licenses, money, and securities.

Premium. Money paid to an insurer by the insured to transfer risk under a contract of insurance.

Producer. A representative of an insurance buyer authorized to negotiate insurance coverage for the insured. Previously Pennsylvania had insurance agents and insurance brokers, with different licenses, and who represented different interests. This was changed by Act 147 of 2002, which defined an insurance producer as "A person that sells, solicits or negotiates contracts of insurance." This replaced the prior system of agents and brokers.

Real Property. Land, buildings, other structures and permanent improvements.

Reinsurance. A transaction in which one party, the "reinsurer," in consideration of a premium paid to it, agrees to indemnify another party, the "reinsured," for part or all of the liability assumed by the reinsured under a policy of insurance that it has issued. The reinsured may also be referred to as the "original" or "primary" insurer or the "ceding company."

Replacement Cost Coverage. Coverage that will fully repair or replace lost or damaged property with a like item. (Depreciation costs do not reduce the value of the insured property).

Retroactive Date. A method insurers use to define coverage in claims-made policies, by excluding coverage for any claim with an occurrence date prior to this date. The retro date can be eliminated or extended at times in exchange for additional premium.

Retrospective Rating Plans. A type of policy where the final premium is based upon the insured's loss experience during the policy period, subject to a minimum and maximum.

Risk Retention Group (RRG). An insurance company formed pursuant to the federal Risk Retention Act of 1981, which was amended in 1986 to allow insurers underwriting all types of liability risks except workers' compensation to avoid cumbersome multistate licensing laws. An RRG must be owned by its insureds. Most RRGs are formed as captives and must be domiciled onshore, except for those grandfathered under the 1981 Act.

Self-Insured Retention (SIR). The amount of each loss assumed by a self-funded program or by a self-insurer, below any excess or umbrella coverage. Under a fully insured program (one in which the risk has been transferred under contract to an insurer), the amount of each loss that the insured is responsible for is referred to as a deductible.

Severity. The degree of impact of a loss.

Subrogation. The assignment to an insurer by terms of the policy or by law, after payment of a loss, of the rights of the insured to recover the amount of the loss from one legally liable for it.

Surety. An individual or company which guarantees faithful or honest performance under a bond.

VI. Additional Information

- **The Association of Governmental Risk Pools**
  www.agrip.org

- **International Risk Management Institute (IRMI)**
  www.irmi.org

APPENDIX I

Risk Manager's Insurance Guide

GENERAL SAFETY CHECKLIST

GENERAL POLICIES AND PRACTICES	OK	Location if not OK	Recommendations
Each department has safety rules.	☐		
Injuries must be reported immediately to the supervisor.	☐		
Hazards must be reported to a supervisor immediately after they are discovered.	☐		
Supervisors are required to investigate all accidents in a timely matter and to route reports to management.	☐		
Smoking is permitted only in designated areas.	☐		
Employees reporting for work under the influence of alcohol or drugs are subject to disciplinary action.	☐		
Only public employees are permitted to operate publicly owned vehicles and equipment.	☐		
All employees who operate a vehicle must have a valid driver's license.	☐		
Horseplay and practical jokes are prohibited.	☐		
Employees must notify supervisors when taking prescription medication that causes reactions such as fatigue, dizziness or impaired vision or judgement.	☐		
Accident and injury reports are reviewed by supervisors and discussed with employees.	☐		

GROUNDS AND BUILDING ENTRANCES			
Grounds are free of unusual hazards such as holes, protrusions and other obstacles.	☐		
Trees are free of loose branches or protruding roots.	☐		
Fences are structurally sound and free of holes.	☐		
Sidewalks, entrances steps and lawns are properly maintained.	☐		
Walkways and paved areas are free of cracks and loose pavement.	☐		
All doors and windows are in working condition.	☐		
Outside lighting is sufficient around pedestrian traffic areas.	☐		

BUILDINGS AND STRUCTURES

	OK	Location if not OK	Recommendations
Ceilings are free of cracks.	☐		
Rest rooms are free of water hazards.	☐		
Handrails and treads in stairways are in good condition.	☐		
Stairway risers are of proper height.	☐		
Lighting in stairways is adequate.	☐		
Floors are free of holes, splinters, protruding nails, slippery areas and loose boards.	☐		
All openings in floors are covered and marked.	☐		
Aisles and passageways have adequate width and are unobstructed.	☐		
Aisles and passageways are well-defined, marked or painted.	☐		
Work areas have adequate lighting.	☐		
Work areas are well-ventilated and free of fumes.	☐		

FIRE SAFETY

All emergency exits are properly marked.	☐		
Each building has an evacuation and emergency preparedness plan.	☐		
Employees are trained in fire fighting or are familiar with evacuation plans.	☐		
Fire extinguishers and other fire fighting equipment is checked regularly.	☐		
Sprinkler system is in good working condition.	☐		
Fire alarms and smoke detectors are checked regularly.	☐		
Rubbish and used chemicals are disposed of properly.	☐		
Explosive or flammable materials are properly stored and ventilated.	☐		

MACHINERY, TOOLS AND EQUIPMENT

All machinery and equipment is maintained properly.	☐		
Belts, gears, chains, clutches and shafting are properly guarded.	☐		
Effective point-of-operation guards are in place.	☐		
Equipment and facilities are free of oil or grease spills.	☐		

MACHINERY, TOOLS AND EQUIPMENT *(cont'd)*	OK	Location if not OK	Recommendations
Gas cylinders are in working condition.	☐		
Tampering or unauthorized use of any machinery or equipment is prohibited.	☐		
Tools and machines are free of split or loose handles.	☐		
All cutting edges are sharp.	☐		
All tools are maintained in a good state of repair.	☐		
Ladders, scaffolds and horses are of standard construction and are in good condition.	☐		
Ladders or self-locking step stools are of an approved design.	☐		
Electrical tools, switch boxes and fixtures are properly grounded.	☐		
Wiring, fixtures, connections and extension or portable cords are safely insulated and installed properly.	☐		
Extension cords are free of frays and breaks.	☐		
All electrical wall outlets and switches are in working order.	☐		

HOUSEKEEPING			
Materials are properly stacked and stored according to established guidelines.	☐		
Overhead clearance is ample.	☐		
Work areas are neat and clean.	☐		
Work areas are free of hazardous materials.	☐		
Desks, cabinets and file drawers and/or doors are maintained properly.	☐		
Aisles and walkways are kept clear at all times.	☐		
Access to all emergency equipment such as fire extinguishers, emergency eye wash and showers are kept clear of obstacles.	☐		

EMPLOYEE PRACTICES			
All equipment and machinery is used properly.	☐		
Materials are loaded and unloaded safely.	☐		
Lifting is done in a proper manner.	☐		
Assistance is available to lift or move heavy objects.	☐		
Safety devices are used.	☐		

EMPLOYEE PRACTICES *(cont'd)*	OK	Location if not OK	Recommendations
Safety glasses, goggles, hard hats, vests, safety shoes and other protective equipment is worn when required.	☐		
Workers refrain from engaging in horseplay.	☐		
Workers are prohibited from wearing jewelry while working on or around machinery or electrical circuits.	☐		
Vehicles are operated in a safe manner at all times.	☐		
Traffic cones, warning flags and barriers are used in accordance with construction traffic control standards.	☐		

FIRST-AID			
Employees are trained in first-aid procedures.	☐		
First-aid supplies are available and easily accessible at each work site.	☐		
First-aid supplies are checked and replaced periodically to ensure freshness.	☐		
Emergency procedures and telephone numbers are posted.	☐		

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
GOVERNOR'S CENTER FOR LOCAL GOVERNMENT SERVICES

APPENDIX II

Risk Manager's Insurance Guide

GOVERNMENTAL LOSS ANALYSIS

FREQUENCY AND SEVERITY

FISCAL YEAR		LOSSES CLASSIFIED ACCORDING TO SIZE								
		- 500	501 1,000	1,001 5,000	5,001 10,000	10,001 25,000	25,001 50,000	50,001 100,000	Over 100,000	TOTAL
20____	Number									
	Dollars									
20____	Number									
	Dollars									
20____	Number									
	Dollars									
20____	Number									
	Dollars									
20____	Number									
	Dollars									
Total	Number									
	Dollars									
Average	Number									
	Dollars									

COMMONWEALTH OF PENNSYLVANIA
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GOVERNOR'S CENTER FOR LOCAL GOVERNMENT SERVICES

APPENDIX III

Risk Manager's Insurance Guide

ACCIDENT/INJURY INVESTIGATION FORM

1. DEPARTMENT:		2. DATE AND TIME ACCIDENT OCCURED:
3. SUPERVISOR:		4. DATE AND TIME ACCIDENT WAS REPORTED:
5. LOCATION OF ACCIDENT:		
6. NAME OF INJURED PERSON:		7. TITLE: *(address & phone number if not an employee)*
8. NAME OF WITNESSES:		9. TITLES: *(address & phone number if not an employee)*
10. INJURED PERSON'S SUPERVISOR AT THE TIME OF INJURY: *(if different from above)*		
11. DESCRIPTION OF INJURY: PERSON RECEIVED MEDICAL ATTENTION? ☐ YES ☐ NO		
12. CAUSE OF INJURY:		
13. TYPE OF EQUIPMENT THE PERSON WAS USING?		
14. INJURED PERSON'S DESCRIPTION OF ACCIDENT: *(including circumstances leading up to the accident)*		
15. COSTS OF MEDICAL CARE:	16. NUMBER DAYS OF LOST WORK:	17. COSTS OF HIRING/TRAINING REPLACEMENT:

SUPERVISOR'S EVALUATION

Yes	No	
☐	☐	1. Has a similar accident or injury happened before? If yes, when? ________________
☐	☐	2. Did you know that the employee was doing this job when the injury or accident occurred?
☐	☐	3. Should the employee be doing this job?
☐	☐	4. Was the employee trained to do this job?
☐	☐	5. Was the employee doing the job correctly when the accident occurred?
☐	☐	6. Were conditions and/or equipment efficient and safe?
☐	☐	7. Has the employee done the job correctly in the past?
☐	☐	8. Has the employee ever been corrected or retrained because he or she did the job incorrectly?
☐	☐	9. Did any obstacles keep the employee from doing the job safely:
☐	☐	9a. Conflicting procedures
☐	☐	9b. Conflicting orders
☐	☐	9c. Lack of equipment
☐	☐	9d. Rush to finish the job
☐	☐	10. Has the employee been under any stress?
☐	☐	11. Are there any morale problems among employees?
☐	☐	12. Was the job procedure awkward or unsafe?
☐	☐	13. Was personal protective equipment required for performing this job?
☐	☐	13a. Was it used?
☐	☐	13b. Was it used correctly?
☐	☐	14. Is the job boring?
☐	☐	15. Was the accident preventable?

RECOMENDATIONS FOR PREVENTING THIS ACCIDENT FROM RECURRING IN THE FUTURE:

APPENDIX IV

Risk Manager's Insurance Guide

EMPLOYEE DRIVING RECORDS

DESIGNATED DRIVERS	LICENSE NUMBER	YEARS OF DRIVING EXPERIENCE	DRIVER'S TRAINING (DATE)	NUMBER OF TRAFFIC VIOLATIONS (OR POINTS)
REGULAR DRIVERS *(operate vehicles regularly as part of job)*				
OCCASIONAL DRIVERS *(operate vehicles infrequently)*				
NON-DRIVERS *(do not operate vehicles as part of job but authorized to drive in an emergency)*				

INDEMNIFICATION

The following contractual language related to indemnification and the assumption of risk should be submitted to a review by the municipality's solicitor or chief legal counsel prior to incorporation into any final agreement.

INDEMNIFICATION

To the extent permitted by law, CONTRACTOR covenants to save, defend, keep harmless and indemnify the Township/Borough/City/County/Authority of and all of its elected or appointed officials, consultants, agents, authorized volunteers and employees (collectively the "Township/Borough/City/County/Authority") from and against any and all claims, loss, damage, injury, cost (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from or arising out of or in any way connected with the *(use or occupancy of the Township/Borough/City/County/Authority's premises)* or *(Contractor's performance of the work or Contractor's obligations under the contract)*.

APPENDIX VI

Risk Manager's Insurance Guide

PERILS AND EXPOSURES SURVEY

	Expected Frequency			Expected Severity		
	Low	Moderate	High	Low	Moderate	High
ACTS OF NATURE						
Land movement	☐	☐	☐	☐	☐	☐
Earthquake or volcano	☐	☐	☐	☐	☐	☐
Landslide, avalanche	☐	☐	☐	☐	☐	☐
Collapse	☐	☐	☐	☐	☐	☐
Erosion	☐	☐	☐	☐	☐	☐
Water damage	☐	☐	☐	☐	☐	☐
Flood	☐	☐	☐	☐	☐	☐
Sewer/pipes backup	☐	☐	☐	☐	☐	☐
Sprinkler system	☐	☐	☐	☐	☐	☐
Blizzard, icestorm, hail	☐	☐	☐	☐	☐	☐
Windstorm	☐	☐	☐	☐	☐	☐
Tornado	☐	☐	☐	☐	☐	☐
Hurricane	☐	☐	☐	☐	☐	☐
Falling objects	☐	☐	☐	☐	☐	☐
Lightning	☐	☐	☐	☐	☐	☐
HUMAN ACTS						
Crime	☐	☐	☐	☐	☐	☐
Employee dishonesty	☐	☐	☐	☐	☐	☐
Embezzlement	☐	☐	☐	☐	☐	☐
Robbery	☐	☐	☐	☐	☐	☐
Burglary	☐	☐	☐	☐	☐	☐
Larceny	☐	☐	☐	☐	☐	☐
Grand theft	☐	☐	☐	☐	☐	☐
Fraud	☐	☐	☐	☐	☐	☐
Forgery	☐	☐	☐	☐	☐	☐
Counterfeiting	☐	☐	☐	☐	☐	☐
Arson	☐	☐	☐	☐	☐	☐
Vandalism/malicious mischief	☐	☐	☐	☐	☐	☐
Riots/civil disorder	☐	☐	☐	☐	☐	☐
Unintentional employee errors	☐	☐	☐	☐	☐	☐
Accidents	☐	☐	☐	☐	☐	☐
Employee injuries	☐	☐	☐	☐	☐	☐
Illness	☐	☐	☐	☐	☐	☐
Occupational disease	☐	☐	☐	☐	☐	☐
Drug/alcohol addiction	☐	☐	☐	☐	☐	☐
Mental Illness	☐	☐	☐	☐	☐	☐
Death	☐	☐	☐	☐	☐	☐

	Expected Frequency			Expected Severity		
	Low	Moderate	High	Low	Moderate	High
PROPERTY PERILS						
Glass breakage	☐	☐	☐	☐	☐	☐
Breakdown of machinery	☐	☐	☐	☐	☐	☐
Collision	☐	☐	☐	☐	☐	☐
Auto	☐	☐	☐	☐	☐	☐
Non-auto	☐	☐	☐	☐	☐	☐
Structural collapse	☐	☐	☐	☐	☐	☐
Contamination	☐	☐	☐	☐	☐	☐
Corrosion, wear, abuse	☐	☐	☐	☐	☐	☐
Explosion	☐	☐	☐	☐	☐	☐
Utility loss or failure	☐	☐	☐	☐	☐	☐
Failure of environmental controls	☐	☐	☐	☐	☐	☐
Heat	☐	☐	☐	☐	☐	☐
Air conditioning	☐	☐	☐	☐	☐	☐
Fire/smoke	☐	☐	☐	☐	☐	☐
Equipment obsolescence	☐	☐	☐	☐	☐	☐
Computer failure	☐	☐	☐	☐	☐	☐
INDIRECT EXPOSURES						
Business interruption	☐	☐	☐	☐	☐	☐
Extra expense	☐	☐	☐	☐	☐	☐
Loss of rental income	☐	☐	☐	☐	☐	☐
Loss of earnings	☐	☐	☐	☐	☐	☐
THIRD-PARTY LIABILITIES						
Advertisers	☐	☐	☐	☐	☐	☐
Festival sponsorship	☐	☐	☐	☐	☐	☐
Automobiles	☐	☐	☐	☐	☐	☐
Owned	☐	☐	☐	☐	☐	☐
Non-owned	☐	☐	☐	☐	☐	☐
Leased	☐	☐	☐	☐	☐	☐
Property of others in public care/custody	☐	☐	☐	☐	☐	☐
Contracts	☐	☐	☐	☐	☐	☐
Mutual-aid agreements	☐	☐	☐	☐	☐	☐
Lease agreements	☐	☐	☐	☐	☐	☐
Contracts of easement	☐	☐	☐	☐	☐	☐
Grants	☐	☐	☐	☐	☐	☐
Sales or purchase orders	☐	☐	☐	☐	☐	☐
Notes, mortgages, loans	☐	☐	☐	☐	☐	☐
Construction contracts	☐	☐	☐	☐	☐	☐
Joint facilities usage	☐	☐	☐	☐	☐	☐
Insurance	☐	☐	☐	☐	☐	☐
Pollution liability	☐	☐	☐	☐	☐	☐

	Expected Frequency			Expected Severity		
	Low	Moderate	High	Low	Moderate	High
Personal injury	☐	☐	☐	☐	☐	☐
Trespass	☐	☐	☐	☐	☐	☐
Libel	☐	☐	☐	☐	☐	☐
Slander	☐	☐	☐	☐	☐	☐
Mental injury	☐	☐	☐	☐	☐	☐
Defamation of character	☐	☐	☐	☐	☐	☐
Invasion of privacy	☐	☐	☐	☐	☐	☐
Improper detention or eviction	☐	☐	☐	☐	☐	☐
Malicious prosecution	☐	☐	☐	☐	☐	☐
Discrimination	☐	☐	☐	☐	☐	☐
Products liability	☐	☐	☐	☐	☐	☐
Negligence	☐	☐	☐	☐	☐	☐
Elected officials	☐	☐	☐	☐	☐	☐
Employees	☐	☐	☐	☐	☐	☐
Volunteers	☐	☐	☐	☐	☐	☐
Contractors	☐	☐	☐	☐	☐	☐

SAMPLE INSURANCE AGENT / BROKER SELECTION QUESTIONNAIRE FORM

Insurance Agent / Broker Selection Questionnaire

The Borough / Township of ______________________, Pennsylvania

Month, Date, Year

Street Address
City, State, Zip Code
Phone Number
Fax Number
E-mail Address

SECTION I. GENERAL INFORMATION

1. NAME OF FIRM:

2. ADDRESS: (STREET, CITY, STATE, ZIP)

3. PHONE:	4. FAX:

5. NAME PRINCIPALS, YEARS OF EXPERIENCE AND PROFESSIONAL QUALIFICATIONS / DESIGNATIONS:
(Attach resumes if available; add additional sheets if necessary)

SECTION II. FIRM COMPOSITION

1. NUMBER OF LICENSED AGENTS / BROKERS:	2. PREMIUM VOLUME: *(excluding personal lines)* $
3. NUMBER OF PA MUNICIPAL CLIENTS:	4. PA MUNICIPAL PERCENTAGE OF TOTAL PREMIUM VOLUME: %

5. APPROXIMATE PERCENTAGE OF INSURANCE BUSINESS BY CLASS:

Liability – General & Auto . . . . .____________%

Liability – Speciality Forms
(*Including Police Professional and Public Officials)* . . . . .____________%

Property / Inland Marine & Boiler . . . . . .____________%

Crime . . . . .____________%

Workers' Compensation . . . . .____________%

6. THE BOROUGH / TOWNSHIP WILL BE ASSIGNING INSURERS TO AGENCIES.
List your firm's principal insurers by coverage line in *Priority Order*: most preferred market to least preferred.
Please indicate each insurer's percentage of your firm's overall agency premium volume.

6A. GENERAL AND AUTOMOBILE LIABILITY:

6B. EXCESS & SURPLUS:

6C. PUBLIC OFFICIALS:

6D. POLICE PROFESSIONAL:
6E. CRIME:
6F. WORKERS' COMPENSATION:
6G. PROPERTY AND INLAND MARINE:
6H. BOILER & MACHINERY:

SECTION III. ADDRESSING BOROUGH / TOWNSHIP NEEDS & INTERESTS

1. DESCRIBE ANY SPECIAL CHARACTERISTICS WHICH MAY DISTINGUISH YOUR FIRM FROM OTHERS:

2. IF SELECTED TO HANDLE ALL OR PART OF THE BOROUGH'S / TOWNSHIP'S INSURANCE PROGRAM, INDICATE THE PRINCIPALS AND SUPPORT STAFF WHO WILL BE ASSIGNED TO THE BOROUGH'S / TOWNSHIP'S ACCOUNT:

3. PLEASE PROVIDE THE NAMES, ADDRESSES, PHONE NUMBERS AND CONTACT PERSONS OF THREE CURRENT CLIENTS AS REFERENCES. PENNSYLVANIA MUNICIPALITIES WOULD BE PREFERRED:

4. PLEASE DESCRIBE YOUR AGENCY'S EXPERIENCE WITH THE PA POLITICAL TORT CLAIMS (GOVERNMENT IMMUNITY) ACT OF 1980:

5. WOULD YOUR AGENCY CONSIDER SERVICING THE BOROUGH'S / TOWNSHIP'S ACCOUNT ON A FEE BASIS?

6. WHO FROM YOUR AGENCY WOULD BE AVAILABLE TO ASSIST THE BOROUGH / TOWNSHIP IN THE EVENT OF A LARGE PROPERTY OR LIABILITY LOSS? WHAT CLAIMS EXPERIENCE DO THEY HAVE?

7. DESCRIBE YOUR FIRM'S MARKETING AND RISK MANAGEMENT PHILOSOPHY:

8. WHO FROM YOUR AGENCY WOULD BE AVAILABLE TO ASSIST THE BOROUGH / TOWNSHIP IN LOSS PREVENTION AND CONTROL?

9. WOULD YOU BE AVAILABLE FOR AN INTERVIEW OR AN ORAL PRESENTATION?

SUBMITTED BY:	DATE:
SIGNATURE:	

We appreciate your interest in the Borough / Township of ______________________________, Pennsylvania

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
GOVERNOR'S CENTER FOR LOCAL GOVERNMENT SERVICES

APPENDIX VIII

Risk Manager's Insurance Guide

COMPLAINT FORM

1. COMPLAINT:	2. NUMBER:
3. COMPLAINT'S NAME:	3. DATE:
5. ADDRESS: (STREET, CITY, STATE, ZIP)	
6. PHONE:	7. LOCATION:
8. NATURE:	
9. TIME RECEIVED:	10. TIME COMPLETED:
11. RECEIVED BY:	12. TOTAL TIME SPENT::
13. DETAILS OF COMPLAINT:	
14. DISPOSITION:	
15. COMPLAINT'S SIGNATURE:	
16. EMPLOYEE RECEIVING THIS FORM:	

APPENDIX IX

Risk Manager's Insurance Guide

HOLD HARMLESS FORM

Request a review by Municipal Solicitor prior to use.

SAMPLE HOLD HARMLESS CLAUSE

Municipality of ____, ____________________ County

_____________(Name of contractor)_____________ agrees to indemnify and hold harmless the ______(Municipality)__ of ___________(Name)_______________, its agents, employees or any other person against loss or expense including attorney's fees, by reason of the liability imposed by law upon the _________(Municipality)________, except in cases of the ___________(Municipality)'s___________ sole negligence, for damage because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of this agreement, whether such injuries to persons or damage to property are due or claim to be due to any passive negligence of the _________(Municipality)______, its employees or agents or any other person. It is further understood and agreed that the contractor shall (at the option of the _________(Municipality)______) defend the _________(Municipality)______ with appropriate counsel and shall further bear all costs and expenses, including the expense of counsel, in the defense of any suit arising hereunder.

Pennsylvania Department of Community & Economic Development
Governor's Center for Local Government Services
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

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