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## **LOCAL GOVERNMENT LIABILITY POOL**

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### ARTICLE 2 - LOCAL GOVERNMENT SELF-INSURANCE PROGRAM - LOCAL ADMINISTRATION

#### 1-42-201. Definitions.

(a) As used in this act:

(i) "Board" means the local government self-insurance program joint powers board formed pursuant to this act;

(ii) "Eligible senior citizen center" means a private, nonprofit corporation which is providing the services to senior citizens under W.S. 18-2-105 in a geographical area which is not otherwise served by a senior citizen center which participates in the local government self-insurance program;

(iii) "Final judgment" means any judgment for monetary damages after all appropriate appeals from the judgment have been exhausted or after the time has expired when appeals may be taken;

(iv) "Local government" means as defined by W.S. 1-39-103(a)(ii) and includes eligible senior citizen centers;



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(v) "Local government self-insurance program" or "program" means the program created by this act;

(vi) "Public employee" means any officer, employee or servant of a local government including elected or appointed officials and persons acting on behalf or in service of the local government in any official capacity, whether with or without compensation, including individuals engaged in search and rescue operations under the coordination of a county sheriff pursuant to W.S. 18-3-609(a)(iii). "Public employee":

(A) Except as provided in subparagraph (b) of this paragraph, does not include an independent contractor, peace officer or a judicial officer exercising the authority vested in him;

(B) Includes contract physicians, physician assistants, nurses, optometrists and dentists in the course of providing contract services for county jails.

(vii) "Scope of duties" means performing any duties which a local government requests, requires or authorizes a public employee to perform, regardless of the time and place of performance;

(viii) "This act" means W.S. 1-42-201 through 1-42-206.

1-42-202. Local government self-insurance program; creation; authorized payments.



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(a) There is created the local government self-insurance program to provide a mechanism for local governments to pool resources to handle claims brought against local governments under the Wyoming Governmental Claims Act and arising under federal law. It is the intent of the legislature that the local government self-insurance program shall be operated by a joint powers board formed by local governments participating in the program and administered in accordance with the provisions of this act. The program shall provide for assessments by participating local governments, which together with all income from investments of the program and payments by insurance or reinsurance companies are actuarially sufficient to meet anticipated claims against participating local governments and all associated administrative expenses.

(b) Upon approval of the board, expenditures shall be made by the program for the following claims which have been settled or reduced to final judgment:

(i) Claims brought against participating local governments, other than eligible senior citizen centers or their public employees, other than peace officers, under the Wyoming Governmental Claims Act;

(ii) Claims against participating local governments or their judicial officers or public employees, other than peace officers, arising under 42 U.S.C. 1983 or other federal statutes subject to the provisions of subsection (e) of this section;

(iii) Claims brought against participating eligible senior citizen centers, including its directors, officers, employees and volunteers, arising from acts within the scope of their activities in rendering any service that a senior citizen center may lawfully render;

(iv) Claims against contract physicians, physician assistants, nurses, optometrists or dentists brought under the Wyoming Governmental Claims Act or federal law, provided:



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(A) The contract physician, physician assistant, nurse, optometrist or dentist is unable to procure medical malpractice insurance coverage up to the limits specified in W.S. 1-39-110(b) or 1-39-118(a) as applicable;

(B) The liability of the county shall not exceed limits specified in W.S. 1-39-118(a) except as the limitation may be increased by W.S. 1-39-110(b) both reduced by the amount of the contract physician's, physician assistant's, nurse's, optometrist's or dentist's malpractice insurance coverage applicable to such claim; and

(C) The claim arises from the services performed by the physician, physician assistant, nurse, optometrist or dentist for a county jail.

(c) Upon approval of the board, expenditures may also be made from the program for expenses related to claims under subsection (b) of this section, administrative expenses, insurance and services procured in accordance with W.S. 1-42-203.

(d) Claims against participating local governments and their public employees, or a judicial officer exercising the authority vested in him, arising under 42 U.S.C. 1983 or other federal statutes, shall be defended and indemnification paid subject to the following conditions:

(i) Public employees of participating local governments, other than peace officers, shall be defended and, to the extent provided by paragraph (v) of this subsection, indemnified against any claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the scope of duty;



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(ii) Any civil action, suit or proceeding which is brought against any public employee which on its face falls within the provisions of paragraph (i) of this subsection, or which the public employee, other than peace officers, asserts is based on an alleged act or omission in the scope of duty, shall be defended under the program with an automatic reservation of right by the board to reject the claim unless the act or omission is determined to be within the scope of duty. Any public employee against whom a claim within the scope of this subsection is made shall cooperate fully in the defense of the claim. If the board determines that the public employee has not cooperated or has otherwise acted to prejudice defense of the claim, the defense of the claim may be rejected at any time;

(iii) Unless the act or omission upon which a claim is based is determined by the court or jury to be within the public employee's scope of duty, no funds shall be expended from the program in payment of the final judgment against the public employee;

(iv) Nothing in this subsection shall be deemed to:

(A) Increase the limits of liability under W.S. 1-39-118 for claims brought under the Wyoming Governmental Claims Act;

(B) Affect the liability of a participating local government or of any of its public employees on any claim arising out of the same accident or occurrence; or

(C) Waive the protection of a local government or its public employees from liability where immunity has not been specifically waived.



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(e) The program shall be limited in liability to payment of no more than five hundred thousand dollars (\$500,000.00) for any one (1) occurrence plus loss adjustment expenses. Participating local governments shall be responsible for the amount of any adjudicated claims and expenses in excess of this amount.

(f) Notwithstanding any other provision of this act, no expenditure shall be made from the program in any action to pay any claim or final judgment for exemplary or punitive damages.

1-42-203. Self-insurance program board; powers and duties.

(a) The board shall:

(i) Administer the program;

(ii) Provide legal services for the defense of claims covered by this act;

(iii) Procure insurance, including reinsurance, purchase loss prevention, actuarial and other professional services as required by the board;

(iv) Establish assessments as necessary to operate the program on an actuarially sound basis. Assessments shall be computed to provide for:



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(A) Expenditures authorized under this act; and

(B) Stabilization charges to develop adequate reserves.

(v) Apportion and collect assessments from each participating local government;

(vi) Establish deductibles or retentions as deemed necessary for the efficient operation of the program; and

(vii) Adopt rules governing the administration of the program.

(b) The board may deny a local government participation in or may terminate a participant from the program for a failure to pay the assessments required under this act.

1-42-204. Claims procedures; compromise or settlement of claims; no extension of liability.

(a) Nothing in this act shall be deemed to obviate the necessity of compliance with W.S. 1-39-113 by any claimant.



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(b) Any claim covered under this act may be compromised or settled according to the rules of the board. The provisions of the Wyoming Administrative Procedure Act are not applicable to the payment or settlement of claims. Any person or party adversely affected in compromising or settling a claim shall pursue his remedy in district court pursuant to the Wyoming Rules of Civil Procedure. The board has no liability, and no cause of action exists against the board for failure to settle a claim.

(c) Self insurance provided under this act shall not be considered a purchase of insurance coverage and shall not be deemed an increase of the limits of liability under W.S. 1-39-118(b).

1-42-205. Local government insurance program not subject to insurance laws.

Nothing in this act shall be construed as subjecting the local government insurance account to the laws of the state regulating insurance or insurance companies.

1-42-206. Confidential information.

The claim files maintained by the board shall be considered privileged and confidential and shall be for the use of the board only.