

PROPOSED

SENATE AMENDMENTS TO H.B. 2081

(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 12-820.03, Arizona Revised Statutes, is amended
3 to read:

4 12-820.03. Affirmative defense; resolution by trial

5 A. A public entity or a public employee is not liable for an injury
6 arising out of a plan or design for construction or maintenance of or
7 improvement to transportation facilities, including highways, roads,
8 streets, bridges or rights-of-way, if the plan or design is prepared in
9 conformance with generally accepted engineering or design standards in
10 effect at the time of the preparation of the plan or design and the public
11 entity or public employee gives to the public a reasonably adequate warning
12 of any unreasonably dangerous ~~hazards which would allow the public to take~~
13 ~~suitable precautions~~ **CONDITION.**

14 B. If a genuine issue of material fact exists as to whether the
15 public entity or public employee has met the requirements of subsection A
16 of this section, the issues shall be resolved by a trial before and separate
17 and apart from a trial on damages.

18 Sec. 2. Section 41-621, Arizona Revised Statutes, is amended to
19 read:

20 41-621. Purchase of insurance; coverage; limitations;
21 exclusions

22 A. The department of administration shall obtain insurance against
23 loss, to the extent it is determined necessary and in the best interests of

1 this state as provided in subsection ~~F~~ G of this section, on the
2 following:

3 1. All state-owned buildings, including those of the universities,
4 excluding buildings of community colleges, whether financed in whole or in
5 part by state monies or buildings in which the state has an insurable
6 interest as determined by the department of administration.

7 2. Contents in any buildings owned, leased or rented, in whole or in
8 part, by or to this state, excluding buildings of community colleges, and
9 reported to the department of administration.

10 3. This state and its departments, agencies, boards and commissions
11 and all officers, ~~agents~~ and employees thereof and such others as may be
12 necessary to accomplish the functions or business of the state and its
13 departments, agencies, boards and commissions against liability for acts or
14 omissions of any nature while acting in authorized governmental or
15 proprietary capacities and in the course and scope of employment or
16 authorization except as prescribed by this chapter.

17 4. All personal property reported to the department of
18 administration, including vehicles and aircraft owned by the state and its
19 departments, agencies, boards and commissions and all nonowned personal
20 property that is under the clear responsibility of this state because of
21 written leases or other written agreements.

22 5. This state and its departments, agencies, boards and commissions
23 against casualty, use and occupancy and liability losses of every nature
24 except as prescribed by this chapter.

25 6. Workers' compensation and employers' liability insurance.

26 7. Design and construction of buildings, roads, environmental
27 remediations and other construction projects.

28 8. Other exposures to loss where insurance may be required to
29 protect this state and its departments, agencies, boards and commissions
30 and all officers, ~~agents~~ and employees acting in the course and scope of
31 employment or authorization except as prescribed by this chapter.

1 B. To the extent it is determined necessary and in the best
2 interests of this state, the department of administration shall obtain
3 insurance or provide for state self-insurance against property damage
4 caused by clients and liability coverage resulting from the direct or
5 incidental care of clients participating in programs of this state and its
6 departments, agencies, boards or commissions relating to custodial care.
7 The insurable programs shall include foster care, programs for persons with
8 developmental disabilities, an independent living program pursuant to
9 section 8-521, A TRANSITIONAL INDEPENDENT LIVING PROGRAM PURSUANT TO
10 SECTION 8-521.01, AN EXTENDED FOSTER CARE PROGRAM PURSUANT TO SECTION
11 8-521.02 and respite-sitter service programs. The department shall obtain
12 insurance or provide for state self-insurance pursuant to this subsection
13 to protect the clients participating in these programs and individual
14 providers of these program services on behalf of this state and its
15 departments, agencies, boards or commissions. THE STATE SELF-INSURANCE
16 CLAIMS OR OTHER INSURANCE THAT IS PROVIDED OR OBTAINED PURSUANT TO THIS
17 SUBSECTION MAY NOT BE MORE THAN \$1,000,000 PER CLAIM, INCLUDING RELATED
18 CLAIMS, AND \$2,000,000 IN THE AGGREGATE PER YEAR. THE LIMITS MAY BE
19 ADJUSTED PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION.
20 INSURANCE AND STATE SELF-INSURANCE AS PRESCRIBED IN THIS SECTION DO NOT
21 APPLY TO PROVIDERS WHO ARE CONTRACTUALLY REQUIRED TO INDEMNIFY THIS STATE
22 OR A STATE DEPARTMENT OR AGENCY FOR SOME OR ALL OF THE LIABILITY OF THIS
23 STATE OR A DEPARTMENT OR AGENCY OF THIS STATE. The insurance provided
24 under this subsection does not include medical or workers' compensation
25 coverage for providers. The department may include in its annual budget
26 request pursuant to section 41-622, subsection D a charge for the insurance
27 or self-insurance provided in this subsection. To assist in carrying out
28 this subsection, the department shall establish a seven-member advisory
29 board in accordance with the following provisions:

30 1. The board shall consist of three members appointed by the
31 director of the department of administration, at least one of whom shall be
32 a foster parent, one member appointed by the director of the department of

1 economic security, one member appointed by the director of the department
2 of child safety, one member appointed by the director of the state
3 department of corrections, and one member appointed by the administrative
4 director of the courts.

5 2. The board shall elect a chairman from among its members.

6 3. The board shall hold at least two meetings a year or shall meet
7 at the call of the chairman.

8 4. Board members shall serve for three-year terms.

9 5. Board members are not eligible to receive compensation but are
10 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
11 article 2.

12 6. The board shall provide advice to the department regarding
13 coverage and administration of this subsection and shall assist the
14 department in coordinating its activities pursuant to this subsection with
15 state departments, agencies, boards and commissions.

16 C. TO THE EXTENT IT IS DETERMINED NECESSARY AND IN THE BEST
17 INTERESTS OF THIS STATE, THE DEPARTMENT OF ADMINISTRATION MAY OBTAIN
18 INSURANCE OR PROVIDE FOR STATE SELF-INSURANCE AGAINST LOSSES FOR ANY AGENTS
19 OF THIS STATE OR ITS DEPARTMENTS, AGENCIES, BOARDS OR COMMISSIONS THAT ARE
20 NOT INSURED PURSUANT TO SUBSECTION A OF THIS SECTION. THE COVERAGE SHALL
21 BE LIMITED TO LIABILITY FOR ACTS OR OMISSIONS WHILE ACTING IN THE COURSE
22 AND SCOPE OF EMPLOYMENT OR AUTHORIZATION BY THIS STATE OR ITS DEPARTMENTS,
23 AGENCIES, BOARDS OR COMMISSIONS AND SUBJECT TO ANY OTHER TERMS AND
24 CONDITIONS THAT THE DEPARTMENT OF ADMINISTRATION DETERMINES ARE IN THE BEST
25 INTERESTS OF THIS STATE.

26 ~~C.~~ D. The department of administration may obtain insurance against
27 loss, to the extent it is determined necessary and in the best interests of
28 this state as provided in subsection ~~F~~ G of this section for the
29 professional liability of individual physicians and psychiatrists who
30 provide services under a contract with the state department of corrections.
31 Coverage is limited to acts and omissions committed inside a state
32 department of corrections facility while in the performance of the contract

1 and to individual physicians and psychiatrists who demonstrate to the
2 satisfaction of the state department of corrections that they cannot
3 otherwise obtain professional liability coverage for the services required
4 by the contract. The director of the department of administration may
5 impose on the state department of corrections a deductible for each loss
6 that arises out of a professional liability claim pursuant to this
7 subsection. Any changes in deductible amounts established by the director
8 shall be subject to review by the joint legislative budget committee.

9 ~~D.~~ E. The department of administration may obtain property,
10 liability, disability or workers' compensation insurance, self-insure or
11 develop risk retention pools to provide for payment of property loss or
12 casualty claims or disability insurance claims against contractors of this
13 state with the approval of the joint legislative budget committee. With
14 respect to insurance, self-insurance or risk retention pools for
15 contractors licensed and contracted to do work for this state, the coverage
16 afforded applies with respect to the conduct of the business entity of that
17 contractor. The pool is available to all contractors regardless of the
18 amount that the state-contracted work bears in relation to the amount of
19 nonstate contracted work. The contractor shall be terminated from the pool
20 if the contractor ceases to be a state contractor.

21 ~~E.~~ F. The department of administration may determine, in the best
22 interests of this state, that state self-insurance is necessary or
23 desirable and, if that decision is made, shall provide for state
24 self-insurance for losses arising out of state property, liability or
25 workers' compensation claims prescribed by ~~subsection~~ SUBSECTIONS A, C, D
26 AND E of this section. If the department of administration provides state
27 self-insurance AS PRESCRIBED IN THIS SECTION, such coverage shall be excess
28 over any other valid and collectible insurance, NOTWITHSTANDING ANY OTHER
29 INSURANCE CLAUSE PROVIDED IN THE POLICY OF THE OTHER VALID AND COLLECTIBLE
30 INSURANCE. IF STATE SELF-INSURANCE AND ANY OTHER VALID AND COLLECTIBLE
31 INSURANCE ARE DETERMINED TO BE PRIMARY INSURANCE, THE DEPARTMENT OF
32 ADMINISTRATION AND OTHER INSURERS SHALL CONTRIBUTE EQUAL AMOUNTS UNTIL THE

1 APPLICABLE LIMIT OF INSURANCE HAS BEEN PAID OR NONE OF THE LOSS REMAINS,
2 WHICHEVER OCCURS SOONER. The director of the department of administration
3 may impose on state departments, agencies, boards and commissions a
4 deductible for each loss that arises out of a property, liability or
5 workers' compensation loss pursuant to this subsection. Any changes in
6 deductible amounts established by the director shall be subject to review
7 by the joint legislative budget committee.

8 ~~F.~~ G. In carrying out this chapter, the department of
9 administration shall establish and provide the state with some or all of
10 the necessary risk management services, or shall contract for risk
11 management services pursuant to chapter 23 of this title, as the director
12 of the department of administration deems necessary in the best interest of
13 the state, and in addition to other specifications of such coverage as
14 deemed necessary, may determine self-insurance to be established. Chapter
15 23 of this title does not apply to the department of administration's
16 procurement of insurance to cover losses arising out of state property or
17 liability claims prescribed in ~~subsections A and D of~~ this section or
18 excess loss insurance for the state's workers' compensation liability for
19 individual or aggregate claims, or both, in such amounts and at such
20 primary retention levels as the department of administration deems in the
21 best interest of this state. In purchasing insurance to cover losses
22 arising out of ~~state~~ property or liability claims prescribed by ~~subsection~~
23 ~~A of~~ this section, the department of administration is not subject to title
24 20, chapter 2, article 5.

25 ~~G.~~ H. A successful bidder for risk management services pursuant to
26 this section is not entitled to receive directly or indirectly any sales
27 commission, contingent commission, excess profit commission, or other
28 commissions, or anything of value, as payment for the risk management
29 services except those amounts received directly from this state as payment
30 for the risk management services.

1 ~~I.~~ I. The department of administration shall pay for purchased risk
2 management services, premiums for insurance on state property and state
3 liability and workers' compensation pursuant to this chapter.

4 ~~J.~~ J. A state officer, agent or employee acting in good faith,
5 without wanton disregard of statutory duties and under the authority of an
6 enactment that is subsequently declared to be unconstitutional, invalid or
7 inapplicable, is not personally liable for an injury or damage caused
8 thereby except to the extent that the officer, agent or employee would have
9 been personally liable had the enactment been constitutional, valid and
10 applicable.

11 ~~K.~~ K. A state officer, agent or employee, except as otherwise
12 provided by statute, is not personally liable for an injury or damage
13 resulting from an act or omission in a public official capacity where the
14 act or omission was the result of the exercise of the discretion vested in
15 the officer, agent or employee and if the exercise of the discretion was
16 done in good faith without wanton disregard of statutory duties.

17 ~~L.~~ L. This state and its departments, agencies, boards and
18 commissions are immune from liability for losses arising out of a judgment
19 for wilful and wanton conduct resulting in punitive or exemplary damages.

20 ~~M.~~ M. The following exclusions shall apply to subsections A, B and
21 ~~F~~ F of this section:

22 1. Losses against ~~this state and its departments, agencies, boards~~
23 ~~and commissions that arise out of and are directly attributable to an act~~
24 ~~or omission determined by a court to be a felony by~~ AND LIABILITIES OF a
25 person who is provided INSURANCE coverage pursuant to this ~~article unless~~
26 ~~the state knew of the person's propensity for that action, except those~~
27 ~~acts arising out of the operation or use of a motor vehicle~~ CHAPTER THAT
28 ARISE OUT OF AND ARE DIRECTLY ATTRIBUTABLE TO AN ACT OR OMISSION BY THE
29 PERSON THAT A COURT DETERMINES TO BE A FELONY.

30 2. Losses AND LIABILITIES arising out of contractual breaches.

1 3. INJURY OR DAMAGES EXPECTED OR INTENDED FROM THE STANDPOINT OF THE
2 PERSON INSURED PURSUANT TO THIS CHAPTER. THIS EXCLUSION DOES NOT APPLY TO
3 LAW ENFORCEMENT ACTIVITIES OR OPERATIONS, CORRECTIONAL ACTIVITIES OR
4 OPERATIONS OR INJURY OR DAMAGES RESULTING FROM THE USE OF REASONABLE FORCE
5 TO PROTECT AN INDIVIDUAL OR PROPERTY.

6 ~~M.~~ N. If self-insurance coverage is determined to exist, the
7 attorney general, with funds provided by the department of administration,
8 shall provide for the defense, either through the attorney general's office
9 or by appointment of outside legal counsel, of this state and its
10 departments, agencies, boards and commissions and all officers, agents and
11 employees thereof and such others as are insured by the department of
12 administration for or on account of their acts or omissions covered
13 pursuant to this chapter. All state departments, agencies, boards and
14 commissions, all officers, agents and employees thereof and such others as
15 are insured by the department of administration shall cooperate fully with
16 the attorney general and department of administration in the defense of
17 claims arising pursuant to this chapter.

18 ~~N.~~ O. A claim for liability damages made pursuant to this chapter
19 may be settled and payment made up to the amount of ~~\$25,000~~ \$100,000 or
20 such higher limit as may be established by the joint legislative budget
21 committee with the approval of the director of the department of
22 administration. A claim MAY BE SETTLED AND PAYMENT MADE over the amount of
23 ~~\$25,000~~ \$100,000 up to ~~\$50,000~~ \$250,000 or such higher limit as may be
24 established by the joint legislative budget committee ~~may be settled and~~
25 ~~payment made~~ with the approval of the director of the department of
26 administration and the attorney general. Any claim MAY BE SETTLED AND
27 PAYMENT MADE over the amount of ~~\$50,000~~ \$250,000 or such higher limit as
28 may be established by the joint legislative budget committee ~~may be settled~~
29 ~~and payment made~~ with the approval of the director of the department of
30 administration, the attorney general and the joint legislative budget
31 committee. If it is in the best interest of this state, the joint
32 legislative budget committee may establish higher settlement limits. Any

1 settlements involving amounts in excess of ~~\$50,000~~ \$250,000 or such higher
2 limit as may be established by the joint legislative budget committee shall
3 be approved by the department of administration, the attorney general and
4 the joint legislative budget committee pursuant to the authority granted.
5 The settlement of liability claims shall be solely the authority of the
6 department of administration, the attorney general and the joint
7 legislative budget committee. No state department, agency, board or
8 commission or any officer, agent or employee of this state may voluntarily
9 make any payment, assume any obligation, incur any expense or maintain the
10 individual right of consent for liability claims made pursuant to this
11 chapter except as provided by this section.

12 ~~P.~~ P. Neither the authority provided by this section to insure, nor
13 the exercise of such authority, shall:

14 1. Impose any liability on this state or the departments, agencies,
15 boards and commissions or any officers, agents and employees of this state
16 unless such liability otherwise exists.

17 2. Impair any defense this state or the departments, agencies,
18 boards and commissions or any officers, agents and employees of this state
19 otherwise may have.

20 ~~P.~~ Q. EXCEPT AS OTHERWISE PRESCRIBED BY THIS CHAPTER AND SUBJECT TO
21 ANY LIMIT OF STATE SELF-INSURANCE AND THE TERMS OF ANY INSURANCE OBTAINED
22 BY THE DEPARTMENT OF ADMINISTRATION, the department of administration shall
23 pay, on behalf of any state officer, ~~agent or~~ employee OR PERSON WHO IS
24 PROVIDED STATE SELF-INSURANCE PURSUANT TO THIS SECTION, any damages,
25 excluding punitive damages, for which the ~~officer, agent or employee~~
26 INDIVIDUAL becomes legally responsible if the acts or omissions resulting
27 in liability were within the ~~officer's, agent's or employee's~~ INDIVIDUAL'S
28 course and scope of employment. The department of administration may pay
29 for all damages however designated that the officer, agent or employee
30 becomes legally responsible for if the acts or omissions resulting in
31 liability are determined by the director of the department of
32 administration to be within the person's course and scope of employment.

1 ~~R.~~ R. The department of administration shall adopt such rules as
2 are deemed necessary to carry out, implement and limit this chapter.

3 ~~S.~~ S. For the purposes of determining whether a state officer,
4 agent or employee is entitled to coverage under this chapter, "within the
5 course and scope of employment or authorization" means:

6 1. The acts or omissions that the state officer, agent or employee
7 is employed or authorized to perform.

8 2. The acts or omissions of the state officer, agent or employee
9 occur substantially within the authorized time and space limit.

10 3. The acts or omissions are activated at least in part by a purpose
11 to serve this state or its departments, agencies, boards or commissions.

12 ~~T.~~ T. To the extent it is determined necessary and in the best
13 interest of this state, the department of administration may obtain design
14 and construction insurance or provide for self-insurance against property
15 damage caused by this state, its departments, agencies, boards and
16 commissions and all officers and employees of this state in connection with
17 the construction of public works projects. Workers' compensation liability
18 insurance may be purchased to cover both general contractors and
19 subcontractors doing work on a specific contracted worksite. The
20 department may include in its annual budget request, pursuant to section
21 41-622, subsection D, the cost of the insurance purchased or provided. In
22 connection with the construction of public works projects, the department
23 of administration may also use an owner-controlled or wrap-up insurance
24 program if all of the following conditions are met:

25 1. The total cost of the project is over \$50,000,000.

26 2. The program maintains completed operations coverage for a term
27 during which coverage is reasonably commercially available as determined by
28 the director of the department of insurance and financial institutions, but
29 in no event for less than three years.

30 3. Bid specifications clearly specify for all bidders the insurance
31 coverage provided under the program and the minimum safety requirements
32 that shall be met.

1 4. The program does not prohibit a contractor or subcontractor from
2 purchasing any additional insurance coverage that a contractor believes is
3 necessary for protection from any liability arising out of the contract.
4 The cost of the additional insurance shall not be passed through to this
5 state on a contract bid.

6 5. The program does not include surety insurance.

7 ~~T~~ U. The state may purchase an owner-controlled or wrap-up policy
8 that has a deductible or self-insured retention as long as the deductible
9 or self-insured retention does not exceed \$1,000,000.

10 V. Notwithstanding any other statute the department of
11 administration may:

12 1. Limit the liability of a person who contracts to provide goods,
13 software or other services to this state.

14 2. Allow the person to disclaim incidental or consequential damages.

15 3. Indemnify or hold harmless any party to the contract.

16 W. THE DEPARTMENT OF ADMINISTRATION MAY INTERVENE IN A LAWSUIT
17 AGAINST A PERSON INSURED PURSUANT TO THIS SECTION TO ASSERT A DEFENSE ON
18 BEHALF OF THE PERSON THAT THE CLAIMANT FAILED TO COMPLY WITH SECTION
19 12-821.01 OR THAT A PORTION OR ALL OF THE ACTION IS BARRED BY SECTION
20 12-821. THE DEPARTMENT IS NOT REQUIRED TO EXERCISE ITS RIGHT TO INTERVENE
21 TO CLAIM THAT A PORTION OR ALL OF AN INSURED PERSON'S LIABILITY IS NOT FOR
22 ACTS OR OMISSIONS FOR WHICH THE PERSON IS AFFORDED COVERAGE PURSUANT TO
23 THIS SECTION.

24 ~~T~~ X. For the purposes of subsections ~~S~~ T and ~~T~~ U of this
25 section:

26 1. "Owner-controlled or wrap-up insurance" means a series of
27 insurance policies issued to cover this state and all of the contractors,
28 subcontractors, architects and engineers on a specified contracted worksite
29 for purposes of general liability, property damage and workers'
30 compensation.

1 2. "Specific contracted worksite" means construction being performed
2 at one site or a series of contiguous sites separated only by a street,
3 roadway, waterway or railroad right-of-way, or along a continuous system
4 for the provision of water and power.

5 Sec. 3. Section 41-621.01, Arizona Revised Statutes, is amended to
6 read:

7 41-621.01. Contractors or subcontractors; pooling of property,
8 liability and workers' compensation coverage;
9 exemptions; board of trustees; contract;
10 termination; audit; insolvency

11 A. Pursuant to section 41-621, subsection ~~D~~ E and section 41-622.01
12 two or more contractors or subcontractors licensed to do work for this
13 state or any political subdivision of this state may with the approval of
14 the department of administration enter into contracts or agreements
15 pursuant to this section for the joint purchase of insurance, to pool
16 retention of their risks for property and liability losses and to provide
17 for the payment of the property loss or claim of liability made against any
18 member of the pool on a cooperative or contract basis with one another or
19 may jointly form a nonprofit corporation or enter into a trust agreement to
20 carry out this section in their behalf directly or by contract with a
21 private party, if the department of administration has determined to
22 sanction such a pool. Two or more contractors may also enter into
23 contracts or agreements pursuant to this section to establish a workers'
24 compensation pool to provide for the payment of workers' compensation
25 claims pursuant to title 23, chapter 6 on a cooperative or contract basis
26 with one another or may jointly form a nonprofit corporation or enter into
27 a trust agreement to carry out this section in their behalf directly or by
28 contract with a private party. A workers' compensation pool established
29 pursuant to this subsection may provide coverage for workers' compensation,
30 employers' liability and occupational disease claims. A workers'
31 compensation pool is subject to approval as a self-insurer by the
32 industrial commission of Arizona pursuant to section 23-961, subsection A,

1 paragraph 2 and is subject to title 23, chapter 6 and rules adopted
2 pursuant to that chapter in addition to the requirements of this
3 section. The industrial commission of Arizona, by rule, resolution or
4 order, may adopt requirements for the administration of a workers'
5 compensation pool under this subsection, including separation or
6 commingling of funds, accounting, auditing, reporting, actuarial standards
7 and procedures.

8 B. In addition to other authority granted pursuant to this title,
9 two or more contractors or subcontractors licensed to do work for this
10 state or any political subdivision of this state may enter into contracts
11 or agreements for the joint purchase of life insurance, disability
12 insurance, accident insurance or health benefits plan insurance, to pool
13 retention of their risks of loss for life, disability, health or accident
14 claims made against any contractor or subcontractor member of the pool or
15 to jointly provide the health and medical services authorized in section
16 36-2907. Contractors and subcontractors may establish pools for the
17 purposes of this subsection by any of the following methods:

- 18 1. On a cooperative or contract basis.
- 19 2. By the formation of a nonprofit corporation.
- 20 3. By a contract or intergovernmental agreement with the Arizona
21 health care cost containment system administration.
- 22 4. By the execution of a trust agreement directly by the contractors
23 and subcontractors or by contracting with a third party.

24 C. Contractors or subcontractors of a political subdivision of this
25 state that is a member of a risk retention pool authorized under title 11
26 may obtain life insurance, disability insurance, accident insurance or
27 health benefits plan insurance coverage directly from that political
28 subdivision if coverage is available and as authorized by section
29 11-952.01, subsection C.

1 D. Section 10-11301 does not apply to nonprofit corporations formed
2 pursuant to this section.

3 E. Chapter 23 of this title does not apply to the procurement of
4 insurance or to the procurement of the services provided for in subsection
5 I, paragraph 8 of this section by any pool established pursuant to this
6 section.

7 F. Title 43 does not apply to any pool established pursuant to this
8 section. Any pool established pursuant to this section is exempt from
9 taxation under title 43.

10 G. Each pool shall be operated by a board of trustees consisting of
11 at least five members. The board of trustees of each group shall do all of
12 the following:

13 1. Establish terms and conditions of coverage within the pool
14 including exclusions of coverage.

15 2. Ensure that all claims are paid promptly.

16 3. Take all necessary precautions to safeguard the assets of the
17 group.

18 4. Maintain minutes of its meetings.

19 5. Designate an administrator to carry out the policies established
20 by the board of trustees and to provide day to day management of the group
21 and delineate in the written minutes of its meetings the areas of authority
22 it delegates to the administrator.

23 6. Notify the director of the department of insurance and financial
24 institutions of the existence of the pool and file a copy of the agreement
25 with the director and with the attorney general.

26 7. If the pool is a workers' compensation pool, file a copy of the
27 agreement with the director of the industrial commission of Arizona.

28 H. The board of trustees shall not:

29 1. Extend credit to individual members for payment of a premium
30 except pursuant to payment plans established by the board.

31 2. Borrow any monies from the group or in the name of the group
32 except in the ordinary course of business.

1 I. A contract or agreement made pursuant to subsection A of this
2 section shall contain the following:

3 1. A provision for a system or program of loss control.

4 2. A provision for termination of membership including either:

5 (a) Cancellation of individual members of the pool by the pool.

6 (b) Election by an individual member of the pool to terminate its
7 participation.

8 3. A provision requiring the pool to pay all claims for which each
9 member incurs liability during each member's period of membership.

10 4. A provision stating that each member is not relieved of its
11 liability incurred during the member's period of membership except through
12 the payment of losses by the pool or by the member.

13 5. A provision for the maintenance of claims reserves equal to known
14 incurred losses and an estimate of incurred but not reported claims.

15 6. A provision for a final accounting and settlement of the
16 obligations of or refunds to a terminating member to occur when all
17 incurred claims are concluded, settled or paid.

18 7. A provision that the pool may establish offices where necessary
19 in this state and employ necessary staff to carry out the purposes of the
20 pool.

21 8. A provision that the pool may retain legal counsel, actuaries,
22 auditors, engineers, private consultants and advisors.

23 9. A provision that the pool may make and alter bylaws and rules
24 pertaining to the exercise of its purpose and powers.

25 10. A provision that the pool may purchase, lease or rent real and
26 personal property it deems necessary.

27 11. A provision that the pool shall enter into a financial services
28 agreement with banks and that it may issue checks in its own name.

1 J. A pool or a terminating member shall provide at least ninety
2 days' written notice of the termination or cancellation. A workers'
3 compensation pool shall notify the industrial commission of Arizona of the
4 termination or cancellation of a member thirty days before the termination
5 or cancellation of the member.

6 K. The pool shall be audited annually at the expense of the pool by
7 a certified public accountant, with a copy of the report submitted to the
8 governing body or chief executive officer of each member of the pool and to
9 the director of the department of insurance and financial institutions.
10 The board of trustees of the pool shall obtain an appropriate actuarial
11 evaluation of the claim reserves of the pool including an estimate of the
12 incurred but not reported claims. The department of insurance and
13 financial institutions shall examine each contractor pool once every five
14 years. The director of the department of insurance and financial
15 institutions may examine a contractor pool sooner than five years from the
16 preceding examination if the director has reason to believe that the pool
17 is insolvent. The costs of any examination shall be paid by the pool
18 subject to the examination.

19 L. If, as a result of the annual audit or an examination by the
20 director of the department of insurance and financial institutions, it
21 appears that the assets of the pool are insufficient to enable the pool to
22 discharge its legal liabilities and other obligations, the director of the
23 department of insurance and financial institutions shall notify the
24 administrator and the board of trustees of the pool of the deficiency and
25 provide the director's list of recommendations to abate the deficiency,
26 including a recommendation not to add any new members until the deficiency
27 is abated. If the pool fails to comply with the recommendations within
28 sixty days after the date of the notice, the director shall notify the
29 chief executive officer or the governing bodies, if any, of the members of
30 the pool, the governor, the president of the senate and the speaker of the
31 house of representatives that the pool has failed to comply with the
32 recommendations of the director.

1 M. If a pool is determined to be insolvent or is otherwise found to
2 be unable to discharge its legal liabilities and other obligations, each
3 agreement or contract shall provide that the members of the pool shall be
4 assessed on a pro rata basis as calculated by the amount of each member's
5 annual contribution in order to satisfy the amount of deficiency. The
6 assessment shall not exceed the amount of each member's annual contribution
7 to the pool.

8 N. If a workers' compensation pool fails to comply with title 23,
9 chapter 6 or rules adopted pursuant to that chapter, the director of the
10 industrial commission of Arizona shall immediately notify the director of
11 the department of administration and the director of the department of
12 insurance and financial institutions.

13 Sec. 4. Section 41-622, Arizona Revised Statutes, is amended to
14 read:

15 41-622. Risk management revolving fund; construction insurance
16 fund; self-insured losses and administrative costs;
17 budget requests

18 A. ~~A~~ THE risk management revolving fund and ~~a~~ THE construction
19 insurance fund are established in the department of administration for the
20 purchase of insurance, risk management services including loss prevention
21 services, payment of self-insured losses pursuant to section 41-621,
22 subsections A, B, C, D, ~~and~~ E AND F and administrative costs necessary to
23 carry out risk management services prescribed by section 41-621. The
24 department of administration shall pay for claims processing costs,
25 including adjusting costs, legal defense costs and attorney fees, for any
26 portion of claims falling within state self-insurance coverage pursuant to
27 ~~the provisions of~~ this chapter.

28 B. The risk management revolving fund in the department of
29 administration shall exclude any property loss arising from damage due to
30 mechanical or electrical breakdown, ordinary wear and tear or obsolescence,
31 nonserviceability, mysterious disappearance or inventory shortage.
32 Mysterious disappearance ~~shall~~ DOES not ~~be construed to~~ include a loss if

1 there is a reasonable presumption of theft. The department of
2 administration, subject to chapter 23 of this title, may advance or
3 disburse monies to contractors who rebuild state property as a result of
4 self-insured losses or to persons who supply goods or services in replacing
5 self-insured losses. The department of administration shall pay for claims
6 processing costs, including adjusting costs, legal defense costs and
7 attorney fees, for any portion of claims falling within state
8 self-insurance coverage pursuant to ~~the provisions of~~ this chapter.

9 C. To qualify for payment for loss by theft or burglary of
10 state-owned personal property, an agency, department, board or commission
11 must show evidence of forcible entry or that threat of violence was used in
12 the taking of the property or there must be a reasonable presumption of
13 theft.

14 D. The department of administration shall present to the legislature
15 not later than September 1 of each year, in accordance with ~~the provisions~~
16 ~~of~~ section 35-113, a budget request based on the actuarial needs for
17 liability losses, workers' compensation liability losses, property losses
18 and risk management administrative costs. The budget request shall be
19 broken down to reflect the amount of monies to be charged to each of the
20 state departments, agencies, boards and commissions and any others insured
21 under this chapter. Any state department, agency, board or commission that
22 has an amount for insurance included in its appropriation, whether
23 specifically stated or not, and any state department, agency, board or
24 commission or others insured under this chapter that receive funds other
25 than those appropriated shall be billed for the proportionate share of the
26 charges for insurance or self-insurance by the department of
27 administration. In collecting the agency billings for risk management
28 charges, the director of the department of administration may transfer the
29 entire amount of the billing for appropriated insurance from the agency
30 account into the fund designated in subsection A of this section at the
31 start of the fiscal year or in periodic payments during the fiscal year if
32 necessitated by cash flow restrictions. Those entities or persons insured

1 under ~~the provisions of~~ this chapter that are not state agencies,
2 departments, boards, commissions or employees or that do not receive
3 funding from state sources shall pay annually the amount required by risk
4 management to the risk management revolving fund or construction insurance
5 fund before the coverage continues for existing claims or begins for new
6 claims made. The construction insurance fund shall receive monies
7 necessary to pay the cost of purchasing insurance, providing self-insurance
8 or administering the fund as authorized by section 41-621, subsection ~~S~~ T
9 from each capital construction project budget at rates established by the
10 department of administration and reviewed by the joint committee on capital
11 review. These amounts shall be included in the budget request. All monies
12 received from all billings shall be deposited in the funds as identified in
13 subsection A of this section.

14 E. All monies recovered by the state pursuant to litigation,
15 recovery, salvage value of damaged property, proportionate share monies
16 from any other existing state funds, or otherwise, for damages relating to
17 either a liability, property or workers' compensation loss for which monies
18 from the risk management revolving fund or construction insurance fund have
19 been or will be paid shall be deposited in the respective fund.

20 F. If a revolving fund is projected to be exhausted while the
21 legislature is in session, a special appropriation may be requested by the
22 department of administration for monies to meet the needs of the funds. If
23 the funds are exhausted at a time when the legislature is not in session,
24 any final judgment shall accrue interest and shall be payable ~~upon~~ ON
25 appropriation in the next succeeding regular session of the
26 legislature. Interest on any judgment against this state paid for out of
27 the risk management revolving fund shall accrue at the average yield
28 offered by United States treasury bills during the course of the appeal and
29 shall be paid in accordance with this section. If the appeal is lost by
30 this state, the judgment amount plus interest at the rate prescribed in
31 this subsection shall be paid.

1 G. All monies deposited in the risk management revolving fund are
2 subject to annual legislative appropriation to the department of
3 administration for use pursuant to this section. Monies in the
4 construction insurance fund are continuously appropriated for the fund
5 purposes. The funds established by subsection A of this section are exempt
6 from the provisions of section 35-190 relating to lapsing of
7 appropriations.

8 H. A ~~ten thousand dollar~~ \$10,000 death benefit shall be paid from
9 the risk management revolving fund to the estate of a deceased volunteer,
10 who is registered as a volunteer by the agency, board or commission, or to
11 an employee who is not subject to ~~the provisions of~~ section 38-651.02, ~~upon~~
12 ~~ON~~ proof of death while in the course and scope of duties as prescribed in
13 section 41-621, subsection ~~P~~ Q for any state agency, board or commission.

14 Sec. 5. Section 41-622.01, Arizona Revised Statutes, is amended to
15 read:

16 41-622.01. Revolving fund for joint insurance purchase
17 retention pools

18 A. A permanent special risk revolving fund is established in the
19 department of administration for the purpose of administering joint
20 insurance purchase, self-insurance or pooled retention plans for
21 contractors of this state prescribed by section 41-621, subsection ~~E~~ E.
22 The fund shall be administered pursuant to section 41-621.01. Except if
23 otherwise provided by law, this state shall not appropriate any monies from
24 its general fund in the administration of pools within the special risk
25 revolving fund.

26 B. The monies in the revolving ~~funds~~ FUND may be invested pursuant
27 to section 35-313. Interest earnings on the revolving ~~funds~~ FUND shall be
28 credited to the respective pools within the revolving fund.

29 C. If the revolving fund is projected to be exhausted the board of
30 trustees shall make a special assessment on all members of a respective
31 pool for monies to meet the needs of the fund. If the monies in the fund
32 are exhausted a final claim settlement of judgment shall accrue interest at

1 the legal rate and is payable on receipt of allocated income from members
2 of the pool.

3 D. All monies deposited in the ~~funds~~ FUND identified in subsection A
4 of this section are appropriated to the department of administration for
5 use pursuant to this section and are exempt from section 35-190, relating
6 to lapsing of appropriations."

7 Amend title to conform

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