

Liability Insurance and Local Governments

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INTRODUCTION

Recent activities by the Indiana General Assembly in its efforts to address the insurance crisis are discussed below. The background of the liability insurance crisis and legislative activity is outlined.

In the past several months everyone in this state has been affected by increases in the cost of liability insurance. Whether you're a local official, an employee of a government agency, or in private business you have been exposed to a dramatic decrease in the availability of insurance. And as a simple matter of economics, a decrease in supply means an increase in prices.

For many years governmental units were protected from liability claims by a doctrine known as sovereign immunity. Through the enactment of new laws and court decisions, this doctrine was weakened considerably. As this protection began to erode, Indiana adopted a Tort Claims Act to provide monetary limits on the liability of a unit of government and also offer certain areas of immunity to these units.

It is critical that local governments have this type of protection. Government, unlike the private sector, has no means to pass on cost increases. We are forced to operate on fixed revenues and any financial loss results in a decrease in services.

In recent months the increase in the cost of insurance has had a dramatic impact on counties and other units of government. The problem became large enough that last summer the leadership of the Indiana General Assembly appointed an ad hoc committee to recommend legislation to reduce the crisis.

This legislative committee heard from numerous factions, all having a different viewpoint on the root of the problem and consequently recommended different solutions. It is my contention that there is enough blame to go around. The insurance industry is not faultless, nor is the civil justice system, nor trial lawyers. We, too, can shoulder some of the blame. As managers of local government, we can do a better job of controlling losses and minimizing our exposure to lawsuits.

HOW TO EASE THE INSURANCE CRISIS

What are some things you can do as local government officials to help ease the crisis? We've all heard the term risk management, but what does it mean?

There are some simple changes that can make your city or county a more attractive investment for the insurance industry. Some examples are: Process all insurance claims through one employee. This way he/she should notice recurring losses and call your attention to them. Adopt a policy of reviewing employee driving records. Examine your policy on take home vehicles. Does this practice expose your county to more losses? Do you have a good inventory and replacement program for road signs? How about an up to date appraisal on equipment and buildings?

All of these examples can be implemented at a relatively low cost. You have to decide if the benefit is worth the cost or potential cost.

On legislative matters, the Association of Indiana Counties, Inc. in a joint memorandum with the Indiana Association of Cities and Towns listed six recommendations the legislature should adopt to help alleviate the insurance crisis for local units of government.

They are as follows:

- 1) Reduce the \$300,000 per individual and the \$5 million per occurrence limits.
- 2) Restore road and street design as a condition of non-liability.
- 3) Clarify immunity for license and permit activities of local government.
- 4) Require specific compliance under the notification of claims provision.
- 5) Reduce notification of claims from 180 days to 90 days.
- 6) Require the awarding of attorney fees to the defendant in frivolous lawsuits.