

Legal Q&A

By **Bill Longley**, TML Legislative Counsel

Q. What is governmental entity pooling?

A. Governmental entity pooling can be characterized as a group of governmental entities contracting with each other to combine resources to share risk. In essence, pooling serves as an alternative to a governmental entity purchasing an insurance policy on the private market.

The Governmental Accounting Standards Board characterizes a “public entity risk pool” as follows:

“[A] cooperative group of governmental entities joining together to finance an exposure, liability, or risk. Risk may include property and liability, workers’ compensation, or employee health care. A pool may be a stand-alone entity or be included as part of a larger governmental entity that acts as the pool’s sponsor.”

Statement No. 10 of the Governmental Accounting Standards Board, Pg. 4 (Nov. 1989).

Q. How does pooling work in Texas?

A. In Texas, political subdivisions are authorized to enter into interlocal agreements for the express purpose of increasing the efficiency and effectiveness of local governments. TEX. GOV’T CODE § 791.001. Also, chapter 2259 of the Texas Government Code specifically allows a governmental unit, which includes a combination of political subdivisions contracting with one another using interlocal agreements, to establish a self-insurance fund to protect the governmental unit and its officers, employees, and agents from any insurable risk or hazard. *Id.* § 2259.031. The use of available money or issuance of a public security for a self-insurance fund is considered to be a public purpose of the governmental unit. *Id.* § 2259.001.

Pooling is also permitted for the provision of workers’ compensation insurance as well. State law expressly requires political subdivisions to extend workers’ compensation benefits to its employees by: (1) becoming a self-insurer; (2) providing insurance under a workers’ compensation insurance policy; or (3) entering into an interlocal agreement with other political subdivisions providing for self-insurance. TEX. LABOR CODE § 504.011.

In addition, Chapter 172 of the Local Government Code, also known as the “Texas Political Subdivision Employees Uniform Group Benefits Act,” authorizes political subdivisions to establish risk pools or enter into interlocal agreements with other political subdivisions to establish a risk pool to provide health and accident coverage for officials, employees, retirees, employees of affiliated service contractors, and their dependents. TEX. LOCAL GOV’T CODE § 172.005. A political subdivision or group of political subdivisions that creates a risk pool under Chapter 172 must select trustees to supervise the operation of the pool. *Id.* at § 172.006. The trustees have a fiduciary duty to protect pool assets. *Id.* at § 172.007.

In short, local governments in Texas are legally authorized to work together to self-insure by establishing funds to cover potential losses instead of using the traditional commercial insurance marketplace.

Q. What are some of the advantages of pooling?

A. One benefit of pooling, as compared to purchasing insurance from a third party, is the fact that appointed boards serve as the regulatory authority. The Texas Insurance Code and other state laws relating to the provision or regulation of insurance generally do not apply to self-insurance funds for governmental units. *See* TEX. GOV'T CODE § 2259.037; TEX. LOCAL GOV'T CODE § 172.014; *See also Hill v. Texas Council Risk Management Fund*, 20 S.W.3d 209, 213 (Tex. App.—Texarkana May 3, 2000) (holding that plain and unambiguous language of predecessor to Tex. Gov't Code §. 2259.037 dictates that the Texas Insurance Code does not apply to a self-insurance fund). As a result, insurance pools generally are not subject to state regulation by the Texas Department of Insurance, and members have greater control over the operations of the pool. This allows local governments to solve problems by explicit agreement between the members as opposed to having guidelines prescribed by a different entity.

Additionally, pools often provide savings to pool members in comparison with traditional insurance options due to the non-profit and tax-exempt statuses of pools. Because pools are comprised of governmental entities, they are also in a unique position to tailor their services to the specific needs of their members, like providing loss prevention programs unique to exposures of local governments.

Q. Is there increased liability for cities that self-insure through pools?

A. Generally not. State law expressly provides that the establishment and maintenance of a self-insurance program by a governmental unit is not a waiver of immunity or of a defense of the governmental unit or its employees. TEX. GOV'T CODE § 2259.002. Beyond that, the Texas Supreme Court has determined that the pool itself is a governmental entity and is entitled to the same immunity enjoyed by members of the pool. *Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Property/Casualty Self-Insurance Fund*, 212 S.W.3d 320, 325-326 (Tex. 2006).

Q. Must a city bid for health insurance coverage or public official liability insurance for its officials or employees?

A. Cities must seek competitive bids or proposals when purchasing insurance that will cost more than \$50,000. TEX. LOC. GOV'T CODE § 252.021(b). Chapter 252 of the Local Government Code does not address the need to use competitive bidding or proposals if a city's liability coverage is gained through participation in a group risk pool. As mentioned above, under state law, the coverage provided by risk pools is not considered to be insurance or subject to the traditional requirements applicable to insurance policies. Therefore, most risk pools take the position that statutory procurement requirements do not apply. A city should consult its legal counsel if it wants to acquire coverage in this manner without participating in competitive bidding or proposals.

Q. May a governmental unit issue debt to self-insure?

A. Yes. Governmental entities may sell public securities that are payable from taxes, revenue, or any combination of taxes and revenue to establish a self-insurance fund. TEX. GOV'T CODE §§ 2259.031 and 2259.035. In addition, a city or county may issue certificates of obligation for the establishment and maintenance of a self-insurance fund. *Id.* at § 2259.036.

Q. Does TML have insurance pools?

A. Yes. Established in 1974, the Texas Municipal League Intergovernmental Risk Pool (TMLIRP) provides workers' compensation coverage, as well as a wide range of comprehensive liability and property coverages, to nearly 3,000 local government members. In addition to coverages, TMLIRP has established a loss prevention program that includes training for local governments that is designed to limit losses and ultimately make coverage more affordable. More information about TMLIRP can be found at <https://www.tmlirp.org/>.

In 1979, what is now called the TML MultiState Intergovernmental Employee Benefits Pool (TML MultiState IEBP) was created to provide Texas cities with health insurance at competitive prices. Today, TML MultiState IEBP consists of nearly 1,000 member political subdivisions that have joined together through an interlocal agreement to provide health benefits to eligible employees, officials, retirees, and dependents. More information about TML MultiState IEBP can be found at <https://www.iebp.org/>.