

**Office of the County Attorney
Montgomery County, Maryland**

MEMORANDUM

June 20, 1996

TO: Ray Gulhar
Division of Risk Management
Department of Finance

FROM: Richard H. Melnick *RM*
Associate County Attorney

RE: Self-Insurance Fund Interagency Agreement - Interpretation of 20-37(e)(3).

On May 21, 1996, you asked for an interpretation of the language found at §20-37 (e) (3) of the Montgomery County Code.

I. ISSUE

Interpretation of 1978 statutory language stating that, as a condition upon which the Fund was then established, the insurance protection furnished to Participating Agencies under the Self-Insurance Program will not be less than the coverage provided to them by their independent insurance programs when they begin to receive coverage from the Fund.

II. CONCLUSION

At the time the Fund was established, the statute required that insurance protection furnished to Participating Agencies will not be less than the coverage provided under the independent insurance programs of the participating agencies when they begin to receive coverage from the Fund. This requirement does not apply after the agencies have begun to receive coverage, and does not require the same coverages or policy limits to exist for time infinitum. While the issue is somewhat moot, because the Participating Agencies presently do receive insurance protection at a level greater than that which they had prior to joining the Fund, this phrase does not apply to limit the terms of agreements into which the parties may enter which define present levels of coverage or policy limits.

III. ANALYSIS

A. Section 20-37(e) (3) Language and Legislative History

Section 20-37 (e) (3) of the Montgomery County Code reads as follows:

(e) A self-insurance program is established subject to the following conditions:

(3) Insurance protection furnished to the participating agencies by the Montgomery County self-insurance program will not be less than the coverage provided under the independent insurance programs of the participating agencies when they begin to receive coverage from the fund.

Under the cardinal rules of statutory construction, the language of a statute must be given its natural and ordinary meaning to ascertain and effectuate the legislative intention. Jones v. State, 304 Md. 216, 220, 498 A.2d 622 (1985); In re Arnold M., 298 Md. 515, 520, 471 A.2d 313 (1984); Celanese Corp. v. Comptroller, 60 Md.App. 392, 397, 483 A.2d 359 (1984). Sections 20-37 (a) and (c) specify that the self-insurance program was created to "...provide an adequate comprehensive insurance program to compensate for injury or death of persons or damage to property resulting from... [enumerated acts or omissions] ...within the scope of official duties." (Emphasis added). Section 20-37 (d) further authorizes the County "to cooperate with and enter into agreements with participating agencies. . . for the purpose of obtaining and providing comprehensive insurance coverage in the most economical manner." (Emphasis added).

Where there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intent of the legislature. City of Baltimore v. Hackley, 300 Md. 277, 283, 477 A.2d 1174 (1984). As one of the conditions to which the Program was subject at the time it was established, Section 20-37 provided that the insurance protection furnished by the fund "will not be less than the coverage provided under the independent insurance programs of the participating agencies when they begin to receive coverage from the fund." (Emphasis added). The phrase shows a prospective intent that the requirement regarding the level of "[i]nsurance protection furnished" was to be applicable at the point in time "when the agencies begin to receive coverage," rather than suggesting that the County at all future times must look back and provide a level of insurance protection equal to or greater than that present when the agencies began to receive coverage. Note also that other paragraphs to Section 20-37 were subsequently amended, but subsection (e) (3) was never amended after the Fund was established to change the word "begin" to "began."

The language of a statute should be read in the context of the goal the legislature was seeking to achieve. Kaczorowski v. City of Baltimore, 309 Md. 505, 514, 525 A.2d 628, 633 (1987). The legislative history shows that a feasibility study was undertaken in the several months leading up to and including November 4, 1977, regarding expansion of the County self-insurance program to include participating, non-County, governmental agencies, with the following objectives:

1. To determine cost savings associated with consolidation of workman's compensation, comprehensive general liability, and comprehensive auto liability insurance under conventional first dollar coverage.
2. To explore potential premium savings under a self-insurance risk management concept (under this program alternative specifications were prepared for excess coverage and claims administration).

(Memorandum dated November 4, 1977 from James Gleason, County Executive, to Montgomery County Council, attached as Exhibit A).

The above-mentioned study indicates that the staffs of the County and participating agencies recommended to not accept the excess insurance proposal from AGI, and to self-insure for most insurable risks. It was noted that governmental immunity may minimize these risks to a substantial degree. To ensure that sufficient reserves were then available for possible catastrophic claims against the County and participating agencies, total premium requirements under a then existing conventional first dollar program were to be channeled into the expanded self-insurance program. "In this regard, the premium contribution would be held at the FY78 level." The goal was to accumulate a substantial reserve of \$5-\$6 million dollars during the first two years, so the County could realize the savings associated with the program and reduce the premium payment to the self-insurance fund. (Exhibit A, ppg.3-4). Consistent with keeping the premium contribution of the participating agencies level with that of FY 78, the study recommended that the protection provided by the fund at that time be no less than the coverage agencies were receiving from an independent insurance program in FY 78. (Exhibit A, p.6, #9).

The expanded Self-Insurance Program was to have "virtually unlimited flexibility in that any insurable risk can be covered," and the County was envisioned to be in a position "to provide insurance coverage for professional liability, errors and omissions, and police liability, etc., which cannot be obtained from the insurance community." (Exhibit A, p. 7). The study contemplated that the extent of coverage provided by the expanded Fund included assuming insurance risks "associated with workman's compensation, comprehensive auto liability, and comprehensive general liability, in addition to selected insurable risks not under contract or obtainable from an insurance carrier," and that the "premium savings . . . should be used to improve the accident prevention program of all agencies in the County." (Exhibit A, p.7, Nos. 1, 2, 6 & 9).

Prior to its enactment into law, Bill No. 16-78 was amended to delete the word "Liability" before the word "insurance," at the beginning of 20-37 (e) (3). (Exhibit B, p.3). This demonstrates an intent, at the time the Fund was established, that the entire package of insurance protection furnished by the County to the participating agencies, in the aggregate and not limited to liability protection, "will not be less than the coverage provided under the independent

insurance programs of the participating agencies when they begin to receive coverage from the Fund."

B. Language and Legislative History of Other Provisions in Section 20-37.

A statute must be construed considering the context in which the words are used and viewing all pertinent parts, provisions, and sections so as to assure a construction consistent with the entire statute. Comptroller v. Mandel Re-election Com., 280 Md. 575, 579, 374 A.2d 1130 (1977). Unless there is a clear indication to the contrary, a statute must be read so that no part of it is "rendered surplusage, superfluous, meaningless or nugatory." Bd. of Educ., Garrett Co. v. Lendo, 295 Md. 55, 63, 453 A.2d 1185 (1982). Section 20-37 (e) (1) recognizes, as another condition upon which the program was established, that regulations would govern the administration of the program, stating: "[r]egulations governing the Montgomery County self-insurance fund shall be approved by the chief administrative officer of Montgomery County." Consistent with this, Section 20-37 (e) (5) also provides for the interagency panel "...to prepare standardized procedures for review and approval by the chief administrative officer of the county." Section 20-37 (e) (6) discusses the annual budget submitted by the Interagency Panel to "adequately fund the Program's unencumbered claims reserves according to the standards contained in this chapter."

The goal of establishing funding for insurance protection to participating agencies, and the changes in the circumstances related to insurance since the Fund was established, are further reflected in amendments to Section 20-37(e) (4). As stated in paragraph 1 of the following provision, Section 20-37 (e) (4) presently states only that the Council appropriate "sufficient funds to provide for the Program's premium cost, claim expense, and adequate claims reserves, in addition to providing for the Program's risk management operation." However, in 1978, Section 20-37 (e) (4) originally also included paragraph 2 below, and provided that:

The County Council, upon the recommendation of the County Executive, shall annually appropriate to the Montgomery County Self-Insurance Program sufficient funds to provide for the Program's premium cost, claim expense, and adequate claims reserves in addition to providing for the operating requirements of the Program's risk management operation.

Monies for the Montgomery County Self-Insurance Program's first fiscal year of operation will be appropriated at not less than the preceding year's total premium level of all participating agencies until the unencumbered claims reserve equals one percent (1%) of the immediately preceding year's total appropriation level for all participating agencies. Thereafter, the appropriations for the Montgomery County Self-Insurance Program will provide for premium costs, claims expense, risk management program

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costs and sufficient increases to the unencumbered claims reserve to maintain this reserve of one percent (1%) of the preceding fiscal year's total appropriation level for all participating agencies. (Emphasis added).

A 1982 amendment revised the last three lines in paragraph 2, after the words "claims reserve," to read "...to maintain an unencumbered reserve of four million dollars (\$4,000,000.00)." In 1993, this Section was again amended so that the statute presently provides only that which is contained in the first paragraph quoted above.

The April 22, 1993 County Executive memorandum initiating the elimination of the unencumbered claims reserve included in the amended paragraph 2 above, noted that excess liability insurance had been effectively canceled as of 1985, because premium rates had increased to prohibitive levels, and further indicated that:

In establishing the County's Self-Insurance Program in 1979, the appropriations for this program were to be at a sufficient level in order that the unencumbered claims reserve would be equal to one percent of the participating agencies' operating budget for the preceding fiscal year. . . to absorb major losses which were not appropriated. . . Because of the limitation of liability provided by State law, and because of the [current] strong cash position of the Self-Insurance Program, it is feasible to eliminate the requirement to maintain an unencumbered fund balance. (Emphasis added).

(Memorandum dated April 22, 1993, from Neal Potter, County Executive, to Marilyn Praisner, President County Council, attached as Exhibit C). The memorandum describes reasons for agency contributions and concomitant insurance protection to be tied to the preceding fiscal year in the first year of coverage under the Fund. It also noted changes in the method by which governments account for insurance losses and that specific types of exposure are excluded in most commercial policies and/or should not be funded by the Program. As a result, the statute now states that an appropriation must provide "sufficient funds," and deletes any specific dollar level or percentage of preceding fiscal year amounts at which appropriations must be funded or unencumbered reserves must be maintained.

The original version and subsequent amendments to the statute demonstrate an intent by the legislature that the appropriation during only the "first fiscal year of operation" be "not less" than the premium level of the participating agencies during the preceding fiscal year. The appropriation was to occur in the first fiscal year of operation, until unencumbered reserves equaled 1% of the agencies' preceding fiscal year appropriation level. In the original statute and in the previous 1982 amendment, the legislature further set forth the items for which appropriations would "[t]hereafter" be provided, along with different levels of unencumbered reserves to be maintained. This legislative history is consistent with a reading that Section 20-37 (e) (3) requires

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a level of coverage "not less" than the coverage provided in the preceding fiscal year, only at the time the agencies begin to receive coverage in the Program's "first fiscal year of operation."

In the event there may be two possible interpretations of a statute, "courts will prefer the construction which will result in its legality and effectiveness." District Land v. S.S.C., 266 Md. 301, 312, 292 A.2d 695 (1972); Police Comm'r. of Baltimore City v. Dowling, 281 Md. 412, 420, 379 A.2d 1007 (1977). Furthermore, courts "shun a construction of the statute which will lead to absurd consequences", "or a proposed statutory interpretation if its consequences are inconsistent with common sense." Erwin and Shafer, Inc. v. Pabst Brewing Co., 304 Md. 302, 311, 498 A.2d 1188 (1985); Blandon v. State, 304 Md. 316, 319, 498 A.2d 1195 (1985). The most harsh reading of the statute, with which we disagree, would forever require a level of insurance protection no less than the coverage the participating agencies had received from independent insurance programs when they began to receive coverage from the Fund. In addition to the statutory language and legislative history discussed above, this interpretation would lead to absurd results inconsistent with the purposes of the statute, based on the following facts and circumstances. You have stated that the insurance industry, as well as the coverage and premiums related thereto, is subject to change from year to year. Compared to 1978, the expected risk of loss associated with a particular premium level has increased from 105% to 300%. This, coupled with much lower interest rates at which private insurers can re-invest the premiums, has resulted in dramatic increases in commercial premiums and reductions in coverage to only a fraction (approximately 1/2) of the coverage previously provided by those insurers. As a result of these changes in the insurance industry, guaranteed levels of coverages and policy limits at particular rates, if available at all, cannot reasonably be furnished to participating agencies for an indefinite period of time.

We are now approximately 18 years past the date that the self-insurance program was established. You have indicated that to furnish the same policy limits on all coverages furnished to the agencies by the Program when the fund was first established, if available, would result in astronomical, cost prohibitive contribution payments to each participating agency. Administrative practice and course of conduct is an important indicator of a statute's meaning. Holy Cross Hospital v. Health Services Cost Review Comm., 283 Md. 677, 393 A.2d 181, appeal after remand 290 Md. 508, 431 A.2d 641 (1978). You have noted that the prior practice and course of conduct of the parties during the past 18 years is that all of the parties have agreed to differing levels of coverage and policy limits from year to year, as the needs of the agencies and the insurance climate have changed. This is consistent with Section 20-37 (d), which authorizes the County "to cooperate with and enter into agreements with participating agencies. . . for the purpose of obtaining and providing comprehensive insurance coverage in the most economical manner." The participating agencies presently have, and have had in the past, the option of choosing a different insurance vehicle in lieu of entering into an agreement with the County. (See also Exhibit A, p.7).

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IV. CONCLUSION

The only reasonable interpretation of the subject Code provision is that at the time the self-insurance fund was established, the legislation required that insurance protection furnished to the participating agencies will not be less than the coverage the agencies received from their independent insurance programs in the preceding fiscal year, "when they begin to receive coverage from the fund." The Code provision requires neither a particular level of protection for the duration of the agencies' membership in the fund, nor that the protection furnished to the agencies would forever be equal to or exceed the level of coverage the agencies had when they began to receive coverage from the fund.¹

The parties have in the past entered, and are presently entering, into a Participating Agency Agreement ("Agreement"), in which coverage and the policy limits may differ from that which each participating agency received from independent insurers at the time the agencies joined the fund. Self-Insurance Program Procedures which govern the relationship between the parties to the Agreement have been prepared by the Interagency Panel, are now to be approved by the Chief Administrative Officer for the County, and are designed to govern "the administration of the Montgomery County self-insurance fund", in accordance with §§20-37(e) (1), (e) (5) and (e) (7). These procedures are incorporated by reference into and made part of the Agreement, to express the intent of the parties with respect to insurance coverage issues.

To assure that the participating agencies acknowledge the interpretation of the statute as stated herein, I would recommend that you provide a copy of this memorandum to each participating agency representative, prior to execution of its Participating Agency Agreement. This recommendation is made to assure that there is a meeting of the minds concerning the coverages furnished to the participating agencies, and the contribution levels at the time of the Agreement.

Thank you for your attention to this matter.

cc: Marc P. Hansen, Senior Assistant County Attorney
Joann Robertson, Senior Assistant County Attorney
D. Terry Fleming, Chief, Division of Risk Management

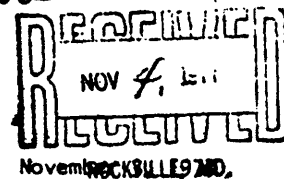
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¹Note that the overall insurance protection furnished to the participating agencies is, in fact, not less than the coverage they were provided by independent insurance programs when they began receiving coverage from the fund.

Office Of The County Executive

MEMORANDUM

Date



To Montgomery County Council

From James L. Gleason, County Executive

Subject Consolidation of Insurance Requirements

In July 1976 the County Council passed legislation that provides for the consolidation of insurance requirements of all County agencies and the utilization of self-insurance concepts. During the past several months the Finance Department has enlisted the support of the staff of the Board of Education, Montgomery College, Housing Opportunities Commission and the Revenue Authority in exploring the feasibility of consolidating the insurance requirements of the County. The primary objectives of the study were:

1. To determine cost savings associated with the consolidation of workmen's compensation, comprehensive general liability, and comprehensive auto liability insurance under conventional first dollar coverage.
2. To explore potential premium savings under a self-insurance risk management concept (under this program alternative specifications were prepared for excess coverage and claims administration).

Specifications were prepared in April 1977 on a County-wide approach to providing insurance protection to the aforementioned agencies. Bids were received in May and only one proposal providing for comprehensive auto liability, comprehensive general liability and workmen's compensation was received for first dollar coverage. No bid was received for excess umbrella insurance under the first dollar coverage program. With regard to those specifications designed to explore the feasibility of self-insurance, two proposals were received for claims administration service. Since it is virtually impossible to obtain excess insurance for a self-insurance program via the formal bid process, it is not surprising that no bids were received for excess coverage on general liability, auto liability and workmen's compensation. The County did however receive two bids for excess coverage on property owned by the County and BOE. The property excess insurance bids were rejected on the basis of excessive cost and the coverage remained in force with the present carrier American Bankers Life Insurance Company.

The only bid received for conventional or first dollar coverage (embracing workmen's compensation, auto liability and general liability on County Government coverage) also was rejected due to high premium cost and the County renewed its existing coverage. In addition, an excess umbrella in the amount of \$1 million was placed in force on July 1, 1977 on an interim basis. It should be noted that the quote on umbrella coverage was 400% higher than the bid received for the same coverage on July 1, 1976. The other agencies were advised to keep in force their present insurance coverage which was not subject to normal termination on June 30, 1977 pending the decision to self-insure these risks.

After analyzing the proposals for first dollar coverage, the staffs of the participating agencies were in complete agreement that the County should self-insure its insurable risks for workmen's compensation, auto and general liability, professional liability, errors and omissions and other selected areas.

Since no excess insurance proposals were received under the formal bid process, the Finance Department requested the firm of Insurance Management, Inc. to solicit proposals from excess carriers. After contacting several insurance companies, Insurance Management, Inc. received only one proposal which was submitted to the County on September 15, 1977. The proposal received from AIG Risk Management Inc. and their member company National Union provides excess coverage for workmen's compensation, auto liability and general liability under the following two alternatives:

1. \$1 million each occurrence excess of \$500,000 Self-Insurance Retention each occurrence
2. \$1 million each occurrence excess of \$1 million Self-Insurance Retention each occurrence

Under the \$500,000 SIR program (alternative No. 1) the minimum premium would be \$1,198,322. Under alternative No. 2, the minimum premium is quoted at \$590,834. AIG Risk Management Inc. also presented a proposal for claims administration which is a mandated condition to securing the excess insurance offered under the foregoing alternatives. The service fee quoted by AIG for claims administration was \$155,000. Following is a table which illustrates the premium savings under the two alternatives.

County, Board of Education, and Montgomery College	FY 79 Net Premium	Alternative No. 1 \$500,000 SIR	Alternative No. 2 \$1,000,000 SIR
Estimated premium - Net	\$3,110,872	\$1,198,322	\$ 590,834
Claims Service Fee		155,000	155,000
Estimated Attorney Fees		70,000	70,000
		<u>1,423,322</u>	<u>815,834</u>
Plus: Average Annual Claims Paid, Taxes, etc.		1,555,486	1,555,486
Total Costs		<u>2,978,808</u>	<u>2,371,320</u>
Less: Interest Accumulations		391,011	391,011
Net Program Cost		<u>2,587,797</u>	<u>1,980,309</u>
Estimated Annual Savings:			
Total Premium - Net		\$3,110,872	\$3,110,872
Net Program Cost		<u>2,587,797</u>	<u>1,980,309</u>
Estimated Annual Savings - FY 79		<u>\$ 523,075</u>	<u>\$1,130,563</u>

It can be observed by the foregoing table that alternatives No. 1 and No. 2 would produce, at current premium levels and projected claims expense, \$523,075 and \$1,130,563 respectively in annual premium savings. It should be noted that average annual claims paid is predicted on the incurred loss experience of the County Government, BOE, and Montgomery College in fiscal years 1975, 1976 and 1977. Based on the past three years' claims experience, the \$1,000,000 Self-insured Retention plan at annual savings of \$1,130,563 would appear to be the best choice of the above two plan.

From the foregoing analysis, it is quite clear that self-insuring the County's risks in the area of workmen's compensation, auto liability and general liability should produce a substantial annual premium savings. The primary decision is not whether the County should establish a self-insurance program but rather should excess coverage be obtained. In this regard, it should be noted that annual premium savings would approach \$1.8 million in FY 79 if the County would assume all insurance risk and not obtain excess coverage. In other words, the County would save an additional \$580,000 (alt. #2) to \$1,880,000 (alt. #1) if per occurrence claim in excess of \$1,000,000 and \$500,000 respectively are not incurred and excess coverage is not obtained.

An historical review of the loss experience of all the agencies involved in this study discloses that no claims would have been subject to the excess insurance coverage proposed by AGI. Moreover, since the proposed excess coverage is on a per occurrence basis, the prospects of the County incurring paid claims in excess of \$500,000 is remote. In any event, the coverage or protection offered by AGI is a manageable risk for the County under a self-insurance program. In addition, the following exposure areas are not covered under the excess insurance proposal:

1. Gas and electric utilities
2. Water works
3. Dams
4. Riot and civil commotion
5. Inverse condemnation
6. Municipal employees' errors and omissions
7. Police professional liability
8. Discrimination
9. ERISA from employee benefits
10. Airport, heliport, landing strip, control tower liability
11. Liquor law liability
12. Hospital professional liability
13. Medical malpractice \
14. Care custody and control
15. Water craft in excess of 50 ft. in length
16. Corporal punishment
17. Teacher's liability
18. Athletic participants

For the above reasons the respective staffs of the various participating agencies recommend that the County Government and its agencies not accept the excess insurance proposal of AGI and self-insure for most insurable risks. It should be noted that government immunity may minimize these risks to a substantial degree. In order to insure that sufficient reserves are available for possible catastrophic claims (as of this date the County and its agencies have not experienced any catastrophic claims), it will be necessary to channel total premium requirements under a conventional first dollar program (current program) into the Self-Insurance Fund. In this regard, the premium contribution would be held at the FY 78 level. Assuming that incurred claims experience remains at projected levels, a substantial reserve in the neighborhood of \$5 to \$6 million can be accumulated within the next two years. At the conclusion of this two-year period, the County would be in a position to realize the savings under this program and reduce premium payment to the Self-Insurance Fund. Under this scenario General Fund contributions would equate to 45% of the estimated net premium cost in FY 80.

It should be noted that under the conventional first dollar insurance program, there would be an additional \$600,000 in premium cash flow (above the appropriation level for the County Government) required in FY 78. The primary reason for this additional cash premium is associated with a substantial increase in the workmen's compensation modification rating by the State Government. If the decision is made to expand the self-insurance program for the remainder of FY 78, the self-insurance fund will be in a position to absorb this additional \$600,000 cash flow requirement.

Based on a review of all costs associated with the operation of a self-insurance fund and projected insurance premium, it is estimated that savings approaching \$3 million for the period through FY 80 will be realized from an expanded self-insurance program. It should also be noted that the foregoing premium savings are conservative in that incurred claims will in all probability be greater than indicated in the pro forma study. Table A shown on the following page illustrates the estimated savings and first year loss if the County and BOE implement the expanded self-insurance program on December 1, 1977.

A loss in FY 78 will have to be absorbed if the County and BOE convert to a self-insurance program in FY 78 or FY 79. The first year loss is due to conversion cost and penalties associated with the termination of the three year retro plans of the County and BOE. The County and BOE can avoid the payment of penalties under their existing retro plans by delaying the implementation of the self-insurance program until July 1, 1978 (County) and July 1, 1979 (BOE). However, under this alternative the three year saving would be \$55,000 less than the estimated savings associated with the December 1, 1977 implementation date. In other words, the savings in premium under a self-insurance posture substantially offsets the retro plan termination losses and the sooner the program is implemented the greater the savings. Exhibits 1 and 2 reflect the annual savings and first year loss of the program assuming implementation dates of July 1, 1978 and July 1, 1979.

Since the December 1, 1977 implementation date produces the highest three year savings, it is the recommendation of the County Executive that the existing self-insurance fund be expanded at that time. An early implementation date would also provide the participating County agencies with an opportunity to gain experience in the operation of a self-insurance program (loss control management, development of insurance policy, coordination of safety program, etc.).

Generally, the premium savings associated with self-insurance are:

1. Funds that are currently transferred to the insurance carrier for reserve requirements for unsettled claims would be retained by the self-insurance fund and invested. All interest earnings would accrue to the County's Self-Insurance Fund and not the insurance carrier which is the present situation.
2. The County would invest and retain the earnings from the flow of premium dollars. At the present time the insurance carrier invests and retains the interest earned on premium dollars not required for immediate claims payments.
3. Insurance carrier's overhead and profits normally run 25% of incurred insurance claims. Under the County's self-insurance program, overhead would be in the range of 10% to 15% of paid claims.
4. There are no commissions under a self-insurance program.

**CURRENT AND PROJECTED INSURANCE COSTS VS.
EXPANDED SELF-INSURANCE PROGRAM COSTS
PROGRAM START 12/1/77**

	<u>12/1/77- 6/30/78</u>	<u>7/1/78- 6/30/79</u>	<u>7/1/79- 6/30/80</u>	<u>Totals</u>
<u>Present Insurance Policy Premiums</u>				
Workmen's Compensation	\$1,710,342	\$3,243,752	\$3,568,127	
Comprehensive Auto Liability	441,448	693,616	762,978	
Comprehensive General Liability	365,725	837,229	920,952	
Auto, Fire and Boiler	50,927	96,585	106,244	
Excess Liability, Errors & Omissions	168,174	318,950	350,845	
Total Gross Deposit Premium	2,736,616	5,190,132	5,709,146	
Less: Dividends (6% W.C. Standard)	100,298	190,200	209,220	
Less: Retro Returns	933,769	1,889,060	2,236,457	
Total Net Cost Under Present Insurance Policies	1,702,549	3,110,872	3,263,469	\$8,076,890
<u>Expanded Self-Insurance Program Costs</u>				
Claims Service - Payment Fund	792,860	1,367,000	1,367,000	
Claims Service - Administration	95,700	165,000	165,000	
Maryland Industrial Acc. WC. Tax	46,400	91,900	98,700	
Legal Fees	40,600	70,000	70,000	
Cost of Continued Policies	50,927	96,586	106,244	
Total Self-Insurance Costs, Annual, Before Interest	1,026,487	1,790,486	1,806,944	4,623,917
				3,452,973
<u>Special Conversion Costs, Penalties</u>				
Projected Retro Adjust. Lost 1977-78	676,178	-		
Projected Retro Adjust. Lost Prior 77-78	440,985	-		
Short Rate Penalties of Cancellation	463,050	-		1,580,213
<u>Interest Accumulation Estimates from Self-Insurance</u>				
Total Interest Earned for Period	91,723	391,011	500,000	982,734
<u>Total Costs Under Expanded Program</u>				
Total Self-Insurance Costs Before Interest	1,026,487	1,790,486	1,806,944	
Total Special Conversion Costs, Penalties	1,580,213	-	-	
Total Expanded Program Costs Before Interest	2,606,700	1,790,486	1,806,944	
Less: Interest Accumulation	91,723	391,011	500,000	
Net Total Expanded Self-Insurance Program Costs	<u>\$2,514,977</u>	<u>\$1,399,475</u>	<u>\$1,306,944</u>	5,221,396
<u>Comparison to Present Insurance Policy Premium Costs</u>				
Costs of Present Insurance Temporarily Continued	\$ -	\$ -	\$ -	
Net Total Expanded Self-Insurance Program Costs	2,514,977	1,399,475	1,306,944	
Total Costs Under Expanded Program	2,514,977	1,399,475	1,306,944	
Total Net Cost Under Present Insurance Policies	1,702,549	3,110,872	3,263,469	
Anticipated Savings (Loss)	\$ (812,428)	\$1,711,397	\$1,956,525	\$2,855,494

Following are the specific recommendations of the study group which consists of staff members of each of the participating agencies:

1. That the County Government assume insurance risks (for the County, BOE and Montgomery College) associated with workmen's compensation, comprehensive auto liability, and comprehensive general liability, in addition to selected insurable risks not under contract or obtainable from an insurance carrier.
2. That the existing self-insurance fund be expanded to provide comprehensive coverage for participating County agencies. Under this program it will be necessary to obtain self-insurance certifications from the State of Maryland, Workmen's Compensation Commission Fund and the Department of Motor Vehicles.
3. That the assets and liabilities of the existing property self-insurance fund which provides property coverage for the BOE and County Government be utilized in the expanded County-wide self-insurance fund. This recommendation will have the effect of providing \$1.7 million in surplus to the expanded fund and serve as a reserve for all exposures insured by the expanded fund.
4. That an Interagency Insurance Panel be created and that each participating agency appoint one representative to the Panel. The principal responsibility of the Panel would be to formulate insurance policy, review claims, evaluate loss control programs, etc.
5. That the County Council appropriate insurance contributions for all agencies direct to the Self-Insurance Fund commencing in FY 1979. Under this arrangement, the County Government would be legally responsible for providing insurance protection to the foregoing agencies. This would eliminate the need to determine premium levels for these agencies and in addition would require the County Council to appropriate funds to maintain sufficient claim reserves.
6. Part of the premium savings of the Self-Insurance Fund should be used to improve the accident prevention program for all agencies in the County. The most important element of a successful risk management program is loss control management which at a minimum requires a highly effective safety program.
7. That a full-time attorney and administrative aide be assigned to the Self-Insurance Fund to administer the routine legal requirements of the program. Funds for these two positions would be obtained from the Self-Insurance Fund.
8. That the County contract with an independent claims administration firm to process claims brought against the Self-Insurance Fund. In this regard, proposals have been received under the formal bid process from three claims administration firms. The firm of L.A. REID ASSOCIATES, INC. of Bethesda will be placed under contract to provide the insurance claims service. A separate office will be established by REID ASSOCIATES to operate the Montgomery County claims service. REID ASSOCIATES will also provide assistance to the Interagency Insurance Panel in establishing adequate reserves for the Self-Insurance Fund. A description of the claims service that REID ASSOCIATES will provide is attached (See Exhibit 3).
9. That insurance protection furnished to the participating agencies by the Self-Insurance Fund will not be less than the coverage provided under the FY 78 independent insurance programs.

SUMMARY

Conceptually stated, under the proposed Self-Insurance Program the County will operate an insurance company that will have the legal responsibility of providing insurance protection to the participating agencies. Based on projected insurance premiums and loss experience, the County and its agencies would realize a savings of \$1.7 million in the first full year of operation. It should be reiterated once again that the staff recommendation does not call for obtaining excess coverage for workmen's compensation and comprehensive auto and general liability.

The County, BOE and Montgomery College should be in a position to cancel present coverage and transfer their insurance requirements to the Self-Insurance Fund by December 1, 1977. In this regard, it will be necessary to make a formal presentation of the plan to the Board of Trustees of the Montgomery College on November 17, 1977, and the elected members of the BOE on November 18, 1977. (See Program Schedule Exhibit 4). The only council action required is the adoption of the resolution approving the expansion of the existing Self-Insurance Fund.

It is also important to note that the expanded Self-Insurance Program will have virtually unlimited flexibility in that any insurable risk can be covered. In this regard, the County would be in a position to provide insurance coverage for professional liability, errors and omissions, and police liability, etc., which cannot be obtained from the insurance community.

Pursuant to Bill 7-76, insurance coverage may be provided to other governmental agencies by contractual arrangement. In this regard, if the Self-Insurance Fund is expanded, contracts providing for insurance coverage will be executed between the participating agencies and the County Government. In order to avoid any unnecessary delay associated with supplemental appropriations, the participating agencies including the County Government will be billed by the Self-Insurance Fund for any unencumbered insurance appropriations remaining at the date the agency is insured by the Self-Insurance Fund and any refund of premium due to cancellation of insurance. As indicated earlier, future Self-Insurance Fund contributions will be appropriated directly by the County Council.

If the Self-Insurance Fund proposal is approved, there will be certain risks that will remain with insurance companies. These insurance coverages include excess coverage on County buildings and first dollar coverage on boilers, surety bonds, theft, etc. Since the premiums on these coverages are relatively small, it is not proposed at this time to self-insure these risks. However, the Interagency Insurance Panel will review all nonself-insured coverage and make recommendations to the County Government with respect to the feasibility of assuming these risks.

In order to operate a successful risk management program, it will be necessary to increase the level of service in the accident prevention and claims administration areas. In order to properly reflect the relationship between the occupational health program and the risk management program and to ensure proper cost distribution of the employee medical section, the Self-Insurance Fund should fund the employee medical section beginning FY 1979. At the present time there are six full-time and one part-time employees that are associated with occupational health programs that are under the direction of the Health Department. The day-to-day administration of the employee medical section should remain in the Health Department, with the Office of Safety and Insurance responsible for the development of a comprehensive occupational health program as part of its risk management program.

A comprehensive loss control program will be started in FY 79 which will include additional occupational health activities in stress testing, alcoholic treatment and a closer review of the treatment provided injured County employees.

Attached Exhibit 5 is a proposed management unit (organizational chart) to carry out the responsibilities of a risk management program. The proposed organization calls for the creation of two additional positions for accident prevention specialists during FY 1978. In this regard, it should be mentioned that under a Self-Insurance Program it will be necessary for the County to provide engineering and safety services formerly provided by the insurance company. I am also attaching a proposed resolution for consideration by the County Council. (Exhibit 6).

It should be noted that once the Self-Insurance Fund is underway, an effort will be made to bring the Park and Planning Commission and Fire Service under the Program. My staff will be available to discuss the various elements of this proposal at the convenience of the County Council.

CURRENT AND PROJECTED INSURANCE COSTS VS.
EXPANDED SELF-INSURANCE PROGRAM COSTS
PROGRAM START 7/1/78

	12/1/77- 6/30/78	7/1/78- 6/30/79	7/1/79- 6/30/80	Totals
<u>Present Insurance Policy Premiums</u>				
Workmen's Compensation	\$ *	\$ *	\$ *	
Comprehensive Auto Liability				
Comprehensive General Liability				
Auto, Fire and Boiler				
Excess Liability, Errors & Omissions				
Total Gross Deposit Premium				
Less: Dividends (6% W.C. Standard)				
Less: Retro Returns				
Total Net Cost Under Present Insurance Policies	1,702,549	3,110,872	3,263,469	\$8,076,890
<u>Expanded Self-Insurance Program Costs</u>				
Claims Service - Payment Fund	-	*	*	
Claims Service - Administration	-			
Maryland Industrial Acc. WC. Tax	-			
Legal Fees	-			
Cost of Continued Policies	-			
Total Self-Insurance Costs, Annual, Before Interest	-	1,790,486	1,806,944	
<u>Special Conversion Costs, Penalties</u>				
Projected Retro Adjust. Lost 1977-78	585,589	-	-	
Projected Retro Adjust. Lost Prior 77-78	134,356	-	-	
Short Rate Penalties of Cancellation	-			
<u>Interest Accumulation Estimates from Self-Insurance</u>				
Total Interest Earned for Period	-	287,398	463,646	
<u>Total Costs Under Expanded Program</u>				
Total Self-Insurance Costs Before Interest	-	1,790,486	1,806,944	
Total Special Conversion Costs, Penalties	(719,945)	-	-	
Total Expanded Program Costs Before Interest	-	1,790,486	1,806,944	
Less: Interest Accumulation	-	287,398	463,646	
Net Total Expanded Self-Insurance Program Costs	\$ -	\$1,503,088	\$1,343,298	
<u>Comparison to Present Insurance Policy Premium Costs</u>				
Costs of Present Insurance Temporarily Continued	\$2,422,494	\$ -	\$ -	
Net Total Expanded Self-Insurance Program Costs	-	1,503,088	1,343,298	
Total Costs Under Expanded Program	2,422,494	1,503,088	1,343,298	\$5,268,880
Total Net Cost Under Present Insurance Policies	1,702,549	3,110,872	3,263,469	8,076,890
Anticipated Savings (Loss)	\$ (719,945)	\$1,607,784	\$1,920,171	\$2,808,010

* Figures are the same as Table A Included in memorandum.

CURRENT AND PROJECTED INSURANCE COSTS VS.
EXPANDED SELF-INSURANCE PROGRAM COSTS
PROGRAM START 7/1/79

	12/1/77- 6/30/78	7/1/78- 6/30/79	7/1/79- 6/30/80	Totals
<u>Present Insurance Policy Premiums</u>				
Workmen's Compensation	\$ *	\$ *	\$ *	
Comprehensive Auto Liability				
Comprehensive General Liability				
Auto, Fire and Boiler				
Excess Liability, Errors & Omissions				
Total Gross Deposit Premium				
Less: Dividends (6% W.C. Standard)				
Less: Retro Returns				
Total Net Cost Under Present Insurance Policies	1,702,549	3,110,872	3,263,469	\$8,076,890
<u>Expanded Self-Insurance Program Costs</u>				
Claims Service - Payment Fund		635,000	1,367,000	
Claims Service - Administration		82,500	105,000	
Maryland Industrial Acc. WC. Tax		26,000	98,700	
Legal Fees		35,000	70,000	
Cost of Continued Policies		96,586	106,244	
Total Self-Insurance Costs, Annual, Before Interest		875,086	1,086,944	
<u>Special Conversion Costs, Penalties</u>				
Projected Retro Adjust. Lost 1977-78		-		
Projected Retro Adjust. Lost Prior 77-78		-		
Short Rate Penalties of Cancellation		-		
<u>Interest Accumulation Estimates from Self-Insurance</u>				
Total Interest Earned for Period		166,875	359,182	
<u>Total Costs Under Expanded Program</u>				
Total Self-Insurance Costs Before Interest		875,086	1,806,944	
Total Special Conversion Costs, Penalties		-	-	
Total Expanded Program Costs Before Interest		875,086	1,806,944	
Less: Interest Accumulation		166,875	359,182	
Net Total Expanded Self-Insurance Program Costs		\$ 708,301	\$1,447,762	
<u>Comparison to Present Insurance Policy Premium Costs</u>				
Costs of Present Insurance Temporarily Continued	\$1,702,549	\$1,417,392	\$ -	
Net Total Expanded Self-Insurance Program Costs	-	708,301	1,447,762	
Total Costs Under Expanded Program	1,702,549	2,125,693	1,447,762	5,276,004
Total Net Cost Under Present Insurance Policies	1,702,549	3,110,872	3,263,469	8,076,890
Anticipated Savings (Loss)	\$ -	\$ 985,179	\$1,815,707	\$2,800,886

* Figures are the same as Table A included in memorandum

MONTGOMERY COUNTY CLAIMS SERVICE

A Service Agency of L. A. Reid Associates, Inc.
Bethesda, Maryland

OBJECTIVES

1. To represent Montgomery County's Self Insurance Program in a professional manner.
2. To conduct investigations and adjustments with fairness, competence and integrity.
3. To be unprejudiced in our relationships.
4. To be factual in all of our reports.
5. To achieve economy for the Self Insurance Program.
6. To render the highest quality of service.
7. To achieve harmony with our clients.

FACILITIES

L. A. Reid Associates, Inc. will provide separate office facilities for the servicing of Montgomery County claims. Separate stationary will be utilized. A separate telephone system will be installed. Our adjusters will be provided with vehicles containing two-way radios to insure the most prompt service possible.

ADMINISTRATION

Management and supervision of Montgomery County Claim Service will be assigned to William D. Hodges, Vice President of L. A. Reid Associates, Inc. Mr. Hodges will be available to the supervisory personnel of the county agencies involved for questions or problems that may arise at anytime. All of the experienced personnel of our organization will be available to the Program.

ASSIGNMENT OF CLAIMS

Upon assignment of a claim a file will be created and an experienced adjuster assigned to the case. The County will be made aware of the adjuster handling the case as well as the file number assigned to the case. The adjuster assigned to the case will make contact with the involved person (s) promptly but not later than within twenty-four hours after assignment.

REPORTING PROCEDURES

First Report: The adjuster assigned to the claim will report to the County within fourteen days after assignment. The First Report will reflect the coverage; nature of the loss; the facts uncovered by investigation; the determination of liability, and the amount of monies to be reserved for the claim if the County is liable.

In most instances we are hopeful the claim can be concluded on a first call basis by the experienced adjuster. In most cases the First Report will be a First and Final and if the County is liable the report will reflect the amount of monies to be paid and to whom the monies are to be paid. In serious cases the responsible party for the County will be notified by the adjuster as to the liability exposure immediately after he contacts the person (s) involved in the claim.

Interim Reports: L. A. Reid Associates, Inc. will render Interim Reports every thirty days subsequent to the initial report on cases which cannot be concluded on first call.

Settlement: If Montgomery County delegates authority to L. A. Reid Associates, Inc. to conclude the claims assigned, checks will be issued by our facility as soon as the adjuster determines liability and the amount of loss.

Final Reports: Final Reports to the County will reflect the adjuster's determination of coverage, liability as well as the damages involved. The adjustment process used by the adjuster to determine amount of payment will be fully explained in this report. A complete report for review by Montgomery County personnel will be made if the amount of monies exceeds the delegated authority.

LITIGATION

L. A. Reid Associates, Inc. will provide a list of competent attorneys for Montgomery County's selection to represent the County in cases involving litigation. We will assist the designated counsel with whatever he needs to properly protect the interest of Montgomery County in litigation.

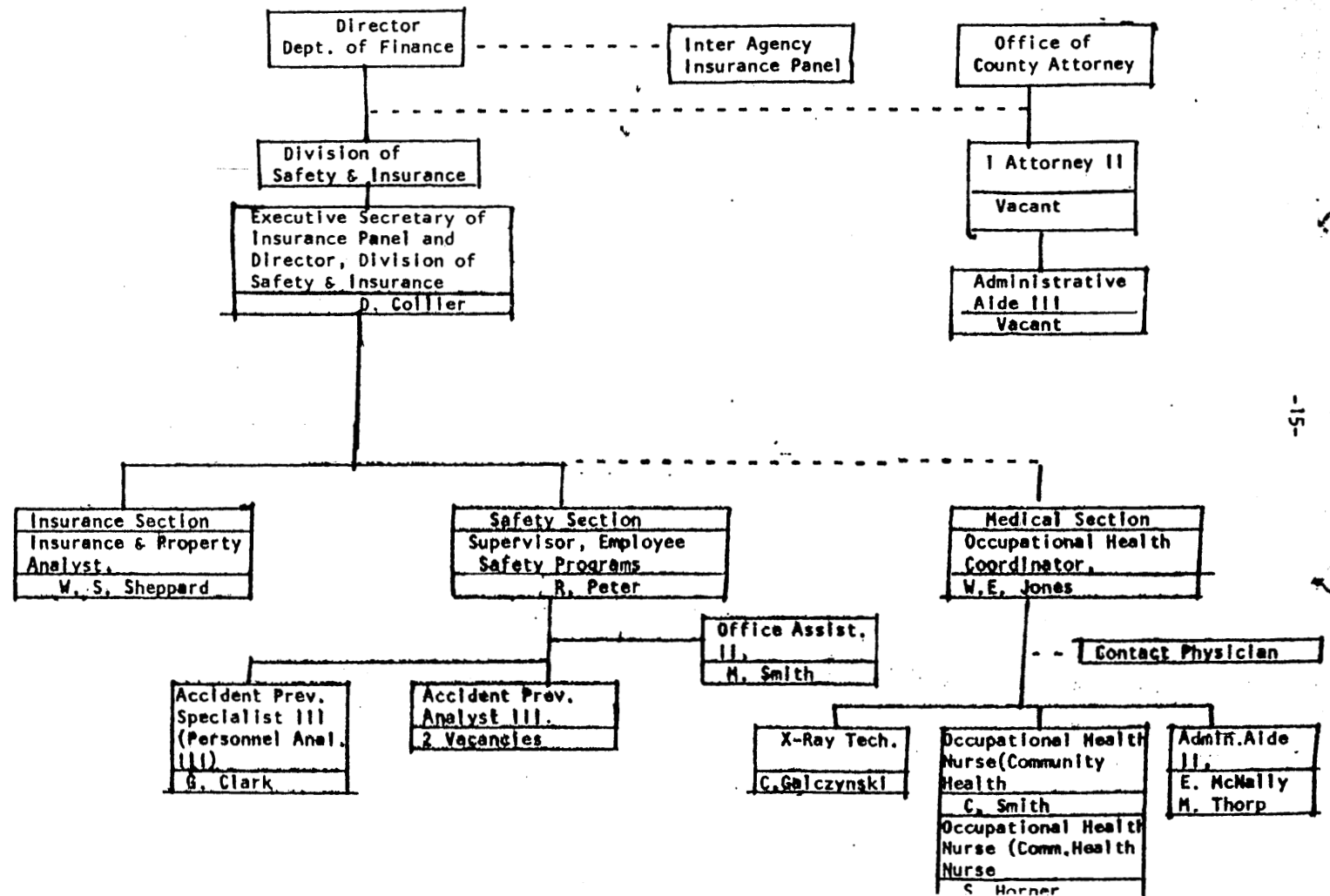
STATISTICAL REPORTS

Statistical reports will be furnished to Montgomery County every thirty days. The reports will include the number of assignments received from the designated agencies; the nature of the claim; the amount paid, if any, and the number of assignments closed. Sufficient detail will be given for a statistical analysis of the causes of claims arising out of the Fund. Our monthly report will be designed to provide whatever statistical information the County may desire.

SELF-INSURANCE FUND EXPANSION PROGRAM SCHEDULE

- 11/1 Send Council Staff program description for Council agenda.
- 11/1 Obtain County Attorney's opinion.
- 11/3 . Send claims service contract to Reid Associates.
- 11/8 Brief Council on program.
- 11/10 Send BOE staff program description and refund agreement for BOE meeting packet.
- 11/10 Send Montgomery College program description and refund agreement for Board packet.
- 11/15 Council pass resolution approving Self-Insurance Program and authorizing using existing insurance appropriation included in non-departmental accounts and funds in property self-insurance fund.
- 11/15 Cancel existing insurance contracts to be effective 12/1/77.
- 11/17 Prepare audit procedures for program fund.
- 11/17 Brief Board of Trustees of Montgomery College on program; have them approve refund agreement and agree to enter program 12/1/77.
- 11/18 Brief BOE on program; have them approve refund agreement and agree to enter program 12/1/77.
- 11/21 Advise all Agencies and Departments of new Self-Insurance program.
- 11/21 Prepare program regulations for approval and adoption by the CAO.
- 11/21 Trustees of fire self-insurance program meet to vote the fund out of existence and to transfer funds to self-insurance fund.
- 11/21 Bill insurance premium accounts of County to obtain any unexpended funds for self-insurance funds.
- 11/23 Receive approval of Workmens' Compensation Commission for County, BOE and Montgomery College to self-insure.
- 11/23 Print new claim forms.
- 11/29 Bill BOE and Montgomery College for unexpended premium funds.
- 12/1 Send claim forms for accidents which occur 12/1/77 or any day after 12/1/77 to Reid Associates.
- 12/1 Place prepaid premium refunds received by County from Insurance companies in Self-Insurance Fund.

EXHIBIT 5



Bill No. 16-78
Draft No. & Date: #2 - 4/7/78
Introduced: 3/7/78
Expiration Date: 9/7/79
Enacted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
March Legislative Session 1978

By: Council President at the request of the County Executive;
Cosponsored by Councilmember Menke

1 AN ACT to amend Chapter 20, title "Finance", Montgomery County Code 1972,
2 as amended, by repealing and re-enacting, with amendments, Section
3 20-44, title "Comprehensive Insurance and Self-Insurance Program
4 TO REDESIGNATE IT AS SECTION 20-37 AND TO ADD IT TO A NEW ARTICLE VII TITLE "INSURANCE";
5 for Employees Insurance and Hospitalization"/to provide for a
6 comprehensive insurance program to protect citizens and the County
7 government, its public officials, employees and agents; to provide
8 that such comprehensive insurance program may include the purchase
9 of insurance from surety companies or, in the alternative, provide
10 for funded self-insurance, or a combination thereof, to provide
11 authorization to cooperate in the program with the Montgomery
12 County Board of Education, Montgomery College, fire departments and
13 rescue squads, the Montgomery County Revenue Authority, the Housing
14 Opportunities Commission, and any other governmental agencies; to
15 provide for the defense of claims by the County Attorney in
16 accordance with the Montgomery County Charter; to provide for a
17 self-insurance program with an annual appropriation to provide funds
18 for the program; to provide for an Interagency Insurance Panel to
19 administer the self-insurance program; to provide that the Interagency
20 Insurance Panel shall prepare an annual budget for the self-
21 insurance program to be submitted to the Montgomery County Executive;
22 to provide that the Interagency Insurance Panel shall keep minutes
23 of meetings and prepare status reports; and to express the legislative
24 intent that the provisions of this Chapter do not constitute a waiver
of sovereign or governmental immunity.

Be it Enacted by the County Council for Montgomery County, Maryland, that -

1 Sec. 1. Section 20-44, title "Comprehensive Insurance and Self
2 Insurance Program", of Chapter 20, title "Finance", Montgomery County
3 Code 1972 as amended, is hereby repealed and re-enacted with amendments
4 AND A NEW ARTICLE VII IS HEREBY ADDED
5 /to read as follows:

6 37. ARTICLE VII. INSURANCE

7 Sec. 20-44/ Comprehensive Insurance and Self-Insurance Program.

8 (a) It is the policy of the County government to provide an adequate
9 comprehensive insurance program to compensate for injury to persons or
10 damage to property resulting from negligence or other wrongful acts of the
11 County's public officials, employees, and agents and to provide protection
12 for property of the County and for officials, employees, and [agencies]
13 agents acting within the scope of their duties.

14 (b) The County is hereby authorized and empowered to adopt or install
15 a plan or system of group health and life insurance and group hospitalization
16 in cooperation with the employees or any portion thereof in any office, agency
17 or branch of the government of the County and with paid employees of quasi-
18 public corporations engaged in the performance of governmental functions,
19 such as fire departments, whenever it may deem such to be advisable in the
20 interest of the health, comfort and welfare of the County.

21 (c) The County is [hereby] further authorized and empowered to provide
22 for an adequate comprehensive insurance program to compensate for injury or
23 death of persons or damage to property resulting from negligence, deprivation
24 of civil rights, malpractice, or any other type of civil or tortious action
25 resulting from the negligence or wrongful act of any public official, agent,
26 or employee within the scope of official duties. The County is also hereby
27 authorized and empowered to provide for an adequate comprehensive insurance
28 program including but not limited to comprehensive general liability, auto,
29 fire, boiler, workmen's compensation and comprehensive auto liability. The
30 insurance program may be provided by purchase of insurance coverage from
31 insurance companies authorized to do business in the State of Maryland or
32 it may be provided by a self-insurance program funded by appropriations by
33 the County Council or by a combination of purchased insurance coverage and
34 self-insurance(.), subject to the granting of all necessary approvals by
the State of Maryland for the self-insuring of workmen's compensation and
comprehensive auto liability coverage.

1 ~~If a self-insurance program is established and funded to cover all~~
 2 ~~or part of the insurance required for a comprehensive program, the Chief~~
 3 ~~Administrative Officer shall adopt regulations for the administration of~~
 4 ~~the program. The insurance program shall provide for defense of claims as well~~
 5 ~~as compensation for damages and the County is authorized within the limits of~~
 6 ~~appropriations of the funded insurance program to engage necessary claims~~
 7 ~~investigators and adjusters, to provide for defense with attorneys to be~~
 8 ~~selected as provided in the Charter, and to settle claims and pay lawful~~
 9 ~~judgments.~~

10 (d) The County is further authorized to cooperate with and enter into
 11 PARTICIPATING AGENCIES, INCLUDING, BUT NOT LIMITED TO,
 12 agreements with the Montgomery County Board of Education, the fire depart-
 13 ments and rescue squads, Montgomery College, the Montgomery County Revenue
 14 Authority, the Housing Opportunities Commission, any bi-county agency,
 15 any municipality, or any other governmental agency within or without the
 16 State of Maryland, for the purpose of obtaining and approving/comprehensive
 PROVIDING
 insurance coverage in the most economical manner. A PARTICIPATING AGENCY
 INCLUDES THE PUBLIC OFFICIALS, EMPLOYEES AND AGENTS OF THE PARTICIPATING AGENCIES.

A SELF INSURANCE PROGRAM IS ESTABLISHED SUBJECT TO THE FOLLOWING CONDITIONS:

17 ~~(e) 1. Pursuant to authorization in this chapter there is hereby~~
 18 ~~THE~~
 19 ~~created a self-insurance program which shall be known as the Montgomery~~
 20 ~~County Self-Insurance Program. Regulations governing the administration~~
 21 ~~of the Montgomery County Self-Insurance Fund shall be approved by the Chief~~
 22 ~~Administrative Officer of Montgomery County.~~

23 2. ~~The County Attorney shall provide defense for claims~~
 24 ~~ITS PUBLIC OFFICIALS, EMPLOYEES AND AGENTS~~
 25 ~~against each participating agency and shall consult with and advise~~
 26 ~~counsel for each participating agency as to the status of each claim~~
 27 ~~against the participating agency. Legal counsel for the participating~~
 28 ~~agency may elect to enter into the defense of any claims against the~~
 29 ~~participating agency, but such participation shall not be funded out~~
 30 ~~of the self-insurance program unless authorized by the County Attorney.~~

31 3. ~~Liability insurance protection furnished to the participating~~
 32 ~~agencies by the Montgomery County Self-Insurance Program will not be less~~
 33 ~~than the coverage provided under the independent insurance programs of the~~
 34 ~~participating agencies when they begin to receive coverage from the Fund.~~

35 4. ~~The County Council upon the recommendation of the County~~
 Executive, shall annually appropriate to the Montgomery County Self-
 Insurance Program sufficient funds to provide for the Program's premium

1 cost, claim expense, and adequate claims reserves in addition to providing
2 for the operating requirements of the Program's risk management operation.

3 Monies for the Montgomery County Self-Insurance Program's first fiscal
4 year of operation will be appropriated at not less than the preceding
5 year's total premium level of all participating agencies until the unen-
6 cumbered claims reserve equals one percent (1%) of immediately preceding
7 fiscal year's total appropriation level for all participating agencies.
8 Thereafter, the appropriations for the Montgomery County Self-Insurance
9 Program will provide for premium costs, claims expense, risk management
10 program costs and sufficient increases to the ^{UN}encumbered claims reserve
11 to maintain this reserve of one percent (1%) of the preceding fiscal year's
12 total appropriation level for all participating agencies.

13 5. An Interagency Insurance Panel is established to advise the participat-
14 ing agencies on risk management and all aspects of a comprehensive loss
15 control program for the Montgomery County Self-Insurance Program.

15a THE PANEL WILL PREPARE STANDARDIZED PROCEDURES FOR REVIEW AND APPROVAL
15b BY THE CHIEF ADMINISTRATIVE OFFICER OF MONTGOMERY COUNTY. The Panel

16 will consist of one representative each from the participating agencies;
17 The Montgomery County representative shall be the Director of the Montgomery
18 County Department of Finance, who shall serve as Chairman of the Panel.
19 The representative from each other participating agency shall be designated
20 by the Administrative Officer of the participating agency. Such appointments
21 shall remain in effect until such time as the County's Finance Director is
22 advised that a new appointment to the Panel has been made.

23 6. The Interagency Insurance Panel shall prepare an annual budget for
24 the Montgomery County Self-Insurance Program which shall include a list of
25 charge-backs required to provide insurance coverage to those County
26 departments and funds that currently are charged by the County's Finance
27 Department for their insurance coverage. The Interagency Insurance Panel
28 shall also include in the budget the amount which is required to adequately
29 fund the Montgomery County Self-Insurance Program's unencumbered claims
30 reserve according to the standards contained in this Chapter.
31 The Panel shall contract with an insurance consultant as necessary to
32 assist them in setting the claims reserve requirement and rate estimates
33 contained in their recommended budget. The proposed budget of the
34 Montgomery County Self-Insurance Program shall be submitted to the
35 Administrative Officer of each participating agency by the Interagency
36 Insurance Panel no later than November first of each year. Any comments

1 which these officials wish to make on the proposed budget of the Montgomery
 2 County Self-Insurance Program shall be returned to the Interagency Insurance
 3 Panel by November twelfth (12th) of that year. The Interagency Insurance
 4 Panel shall submit the proposed budget of the Montgomery County Self-
 5 Insurance Program along with all comments received from Administrative
 6 Officers, if any, to the County Executive, not later than December 1st
 7 of that year. The Interagency Insurance Panel shall also prepare a list
 8 of all safety related expenses which they feel should be placed in the
 9 budgets of participating agencies along with a detailed justification for
 10 such improvements. This list shall accompany the proposed budget of the
 11 Montgomery County Self-Insurance Program throughout the budgetary process.

12 7. Copies of all meeting minutes and applicable status reports
 13 prepared by the Interagency Insurance Panel shall be provided to the
 14 Administrative Officer of each participating agency. Copies of all
 15 standardized procedures developed by the Interagency Insurance Panel,
 16 in accordance with the requirements of this Chapter, shall be provided
 17 to the Administrative Officer of each participating agency, following
 18 their approval by the Interagency Insurance Panel and the Chief
 19 Administrative Officer of Montgomery County.

20 (f) No provision of this Chapter, or any regulations formulated
 21 pursuant to this Chapter, shall constitute, or be interpreted as, a
 22 waiver of the right of the County to rely on and raise the defense of
 23 sovereign or governmental immunity on behalf of the County or any
 24 participating agency when deemed appropriate by the County or the
 25 participating agency.

26 Sec. 2. Severability

27 The provisions of this Act are severable and if any provision,
 28 sentence, clause, section or part thereof is held illegal, invalid or
 29 unconstitutional or inapplicable to any person or circumstances, such
 30 illegality, invalidity or unconstitutionality or inapplicability shall
 31 not affect or impair any of the remaining provisions, sentences, clauses,
 32 sections or parts of the Act or their application to other persons or
 33 circumstances. It is hereby declared to be the legislative intent that
 34 this Act would have been adopted if such illegal, invalid or unconsti-
 35 tutional provision, sentence, clause, section or part had not been included

1 therein and if the person or circumstances to which the Act or any part
 2 thereof is inapplicable had been specifically exempted therefrom.

3 Sec. 3. Effective Date.

4 The Council hereby declares that an emergency exists and that this
 5 legislation is necessary for the immediate protection of public health and
 6 safety. Therefore, this Act shall become effective on the date on which
 7 it becomes law.

Approved:

President, Montgomery County Council	Date
--------------------------------------	------

County Executive	Date
------------------	------

ATTEST:

Secretary of the County Council	Date
---------------------------------	------

[Brackets] indicate deletions from present law.

Underlining indicates additions to present law.

CAPITALIZATION indicates matter added after introduction.

Strike-throughs indicate matter deleted after introduction.

AMENDMENTS TO COUNCIL BILL 16-78

Proposed Revisions to Self-Insurance Program

Proposed By: Council President Scull
(at the request of the County Attorney)

1. The purpose of this amendment is to delete wording which will become obsolete when the new Section 20 (e) 1. is adopted.

On page 3, starting on line 1, delete the sentence "If a self-insurance program is established and funded to cover all or part of the insurance required for a comprehensive program, the Chief Administrative Officer shall adopt regulations for the administration of the program".

2. The purpose of this amendment is to introduce and define the term "participating agency" and to clearly state that both the agency and it's officials, employees and agency are included when this term is used.

On page 3, line 11, after the word "with", insert "participating agencies, including, but not limited to,"

On page 3, line 16, after the word "manner", add a new sentence, "A participating agency includes the public officials, employees and agents of the participating agencies".

3. The purpose of this amendment is to correct a typing error.

On page 3, line 15, delete the word "approving" and insert the word "providing".

4. The purpose of this amendment is to show that the County Attorney shall provide defense for claims against both a participating agency and its public officials, employees and agents.

On page 3, line 23, after the word "agency", insert the wording, ", its public officials, employees and agents".

5. The purpose of this amendment is to remove a word which placed in bill by error and which incorrectly limits the insurance protection which will be provided by the Montgomery County Self-Insurance Program.

On page 3, line 29, delete the word "Liability" and capitalize the letter "I" in the word "insurance".

6. The purpose of this amendment is to correct a typing error.

On page 4, line 10, change the word "encumbered" to "unencumbered".

7. The purpose of this amendment is to provide an additional duty for the Interagency Insurance Panel.

On page 4, line 15, after the word "Program", insert a sentence, "The Panel will prepare standardized procedures for review and approval by the Chief Administrative Officer of Montgomery County".

8. The purpose of this amendment is to correct an error in terminology.

On page 5, ^{line 10} after the word "such", change the word "improvements" to "expenses".

RECEIVED COUNCIL

93 APR 23 P12 : 20




Montgomery County Government

ROCKVILLE, MARYLAND 20850

Neal Potter
County Executive
(301) 217-2500
TTY 217-6505

MEMORANDUM

April 22, 1993

TO: - Marilyn Praisner, President, County Council
FROM: Neal Potter, County Executive 
SUBJECT: Elimination of Unencumbered Claims Reserve of the Montgomery County Self-Insurance Program (County Code Section 20-37(e)4)

In establishing the County's Self-Insurance Program in 1979, the appropriations for this program were to be at a sufficient level in order that the unencumbered claims reserve would be equal to one percent of the participating agencies' operating budgets for the preceding fiscal year. This level of reserve was established to absorb any major losses which were not appropriated. In 1984, the unencumbered reserve level was reduced to \$4 million. At that time, the Self-Insurance Program was able to obtain commercial excess liability coverage of \$50 million, with a \$2 million retention. The \$4 million was intended to cover two catastrophic losses.

In 1985, the County's excess liability insurance coverage was effectively cancelled, because the premium rates had increased to prohibitive levels. Since 1985, except for a one-year period, the County has not purchased commercial excess liability insurance because the cost of coverage was too high.

Since the \$4 million unencumbered fund balance was established in 1984, there have been changes in the method that governments must use to account for insurance losses, as well as a change in State law that limits the amount of damages a local government must pay for tort liability. In November, 1989, the Government Accounting Standards Board issued a statement which requires public entities to recognize losses in the year of occurrence. Consequently, since 1990, the Self-Insurance Program contracts annually with an insurance actuary, to determine the ultimate liability for all outstanding claims, and to project funding levels for the next fiscal year. The actuary considers all exposures in setting the reserve and funding levels. On this basis, the Self-Insurance Program is fully funded. The Program is in a strong cash position and is able to absorb a large loss without affecting the payment of other claims during the year. In 1987, the State legislature enacted the Local Government Tort Claims Act which limits the liability of the government for any one accident to a maximum of \$500,000.

Because of the limitation of liability provided by State law, and because of the strong cash position of the Self-Insurance Program, it is feasible to eliminate the requirement to maintain an unencumbered fund balance.

The exposures to catastrophic loss for the County and participating agencies are pollution liability, civil rights violations, and other federal tort liability. Pollution liability is excluded on most commercial insurance policies, with the exception of sudden and accidental pollution.

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According to risk management, sudden and accidental pollution loss is not a significant exposure to this program. Federal lawsuits for civil rights violations are the largest insurable exposure for the self-insurance program. Unfortunately, the cost of purchasing this coverage is very high. For example, a recent premium quotation risk management received for excess liability (from Local Government Insurance Trust), was \$1.3 million, for \$5 million in coverage, with a \$1 million retention. Risk management believes the self-insurance program could suffer a \$5 million loss with no effect on the ability to pay other claims.

Should the Council not enact this legislation, an additional \$11.9 million will have to be appropriated to member agencies in FY 94 in order to comply with County Code. An actuarial study of the Self-Insurance Fund conducted during FY 93, revealed a significant under-reserving of claims. When the under-reserved amount was recognized as expense, it resulted in a FY 92 fund balance of negative \$7.8 million. Further, it is expected that FY 93 will end with an additional shortage of reserves of approximately \$4.1 million. I propose to fund this shortage in claim reserves over a five-year period.

This action is reflected in my recommended FY 94 Budget and Public Service Program recently submitted to the Council. Therefore, I am transmitting at this time the recommended amending legislation which provides for this elimination of the unencumbered claims reserve. This legislation was prepared by the Office of the County Attorney in coordination with the staff of the Department of Finance, who are available should you need further clarification.

NP:dtf

Attachment