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# Risk Manager's Insurance Guide

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# Risk Manager's Insurance Guide

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# Foreword

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This document offers a brief synopsis of the terminology and generally accepted practices applied in administering a complex insurance program for a Pennsylvania municipality. To a somewhat lesser degree, this document touches on how to use the risk management process to better control losses. This publication is not a comprehensive, sole-source document. There are numerous other organizations and resources available to the serious student of public risk management, including but not limited to:

- local insurance agents.
- insurance company loss control representatives.
- the national and the Pennsylvania Chapter of the Public Risk Management Association (PRIMA).
- the Risk and Insurance Management Society (RIMS).
- the Society of Chartered Property Casualty Underwriters (CPCU).
- the Public Entity Risk Institute (PERI).

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# I. Insurance and the Concept of Risk

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Risk Management is defined as the process of protecting assets from loss. Risk management works best when it is a fundamental, integral part of ongoing operations, ingrained in what municipal officials do day-in and day-out. Risk management has been called “structured common sense,” implying correctly that it is not a complicated process. It does require municipal officials to be cognizant of possible loss exposures as they perform their duties and to be trained on how to address those exposures.

Insurance is a contract between the municipality and an insurer whereby the insurer agrees to indemnify the municipality in the event of a loss, subject to the terms, conditions and limitations of the contract, in exchange for payment of the premium. A typical insurance policy requires the insured to report claims in a timely fashion and to cooperate fully with the insurer during its investigation of the claims. For third party liability claims, the insurer has the authority to decide whether or not to settle with the claimant or to defend the allegations in court.

Insurance is only one risk transfer technique available to municipal decision-makers. Municipalities may choose to set aside funds in special reserve accounts and retain the risk. Or they may decide to participate in joint self-funding programs called risk-sharing pools. Nevertheless, purchasing insurance from a commercial insurer is still the most widely used and generally the most cost-effective way to handle low frequency, high severity losses for small to medium-sized public entities.

This publication is designed to provide an overview of insurance terminology, municipal coverage forms, particular State and Federal law, statutes and case law, and to the degree possible, the risk management process.

## Extent of Municipal Liability

**Liability Exposures.** Prior to the mid-1970s in Pennsylvania, municipalities and their agents enjoyed *sovereign immunity*, an English common law term meaning the “king can do no wrong.” In effect, no matter how negligent a municipality was in performance of its duties, claimants had no recourse for recovery. The Pennsylvania Supreme Court overturned this concept in 1973 with *Ayala v Philadelphia Board of Education*. After this ruling, municipalities and municipal officials were held responsible for their acts under the same legal standing as corporations and individuals. This illustrates the importance of orientation and ongoing training in order for public officials and employees to be aware of acting within the scope of their official duties and responsibilities.

About the same time, litigation was beginning to become the preferred method of resolving disputes. As a result, the filing of complaints against public entities began to increase.

In response to a plea from local government, the Pennsylvania State General Assembly passed the Pennsylvania Political Subdivisions Tort Claims (Governmental Immunity) Act in 1978. The Tort Claims Act (Chapter 85 of the Judicial Code) re-established the concept of governmental immunity except for eight areas, or *exceptions* to immunity, where a municipality could be held liable. The Act limits or caps damages at a maximum of \$500,000 per occurrence for a political subdivision, regardless of the number of plaintiffs. Claimants are required to notify a municipality of a claim within 180 days of the incident, unless physically unable to do so. The statute requires a municipality to defend an official/employee as long as the official/employee acted, or believed he/she acted, in good faith on behalf of the municipality.

As mentioned above, the Act states that no political subdivision shall be liable for any damages on account of any injury to a person or property caused by any act or omission of the political subdivision or an employee except for the specific categories of actions listed below. The eight *exceptions* to governmental immunity in Pennsylvania are:

- Operation of any motor vehicle owned or controlled by the political subdivision including vehicles operated by rail or through water or in the air.
- Care, custody or control of personal property of others by the political subdivision.
- Real property in the care, custody or control of the political subdivision.
- A known dangerous condition of traffic lights, street lights, traffic controls or trees under the care, custody or control of the political subdivision.
- A dangerous condition of steam, water, sewer, electric and gas systems owned by the political subdivision.
- A dangerous condition of streets owned by the political subdivision.
- A dangerous condition of sidewalks owned by the political subdivision if known in sufficient time to have taken corrective action.
- Animals controlled by or in the possession of the political subdivision, including but not limited to police dogs and horses. Wild animals such as bear and deer are not included in this definition.

The Act limits liability to only those defects that the municipality was aware of, or should have known about. Under a pure and simplistic interpretation of the Act, there is no liability for a defect in the roadway if the first notice of the defect was the plaintiff's filing of a claim. If the municipality is unaware of the defect, it cannot be reasonably expected to repair it. However, the Act goes on further to say not only is the municipality responsible for *known defects*, but also for defects about which the municipality "*should have known*." For example, if the municipality's highway superintendent drives to work everyday over the road with the defect, or if the municipal police department regularly patrolled the same road, a plaintiff attorney will argue that the municipality "had constructive notice" even though it was not formally reported by a motorist. On the other hand, the Act stipulates that the municipality must have sufficient time to correct any defect and the extent of the corrective measure must be reasonable relative to budgetary considerations.

The municipality may be held secondarily liable in certain circumstance. Exception number 7, the sidewalk exception, stipulates that a municipality is secondarily liable for sidewalks owned by others. The municipality is responsible for notifying the property owner of a defect and seeing that the defect is corrected in order to protect the public. Also, courts have held that municipalities should notify property owners of sight distance problems created at intersections by overgrowth of foliage. Failure to notify residents of a dangerous condition on their property could carry liability if the condition existed with the knowledge of the municipality. Knowledge could mean the condition was on a street routinely patrolled by police or passed by other employees of the municipality.

The Tort Claims Act also limits the municipality's financial obligation to any uninsured portion of the loss. If a motorist is involved in a vehicle accident with a municipal vehicle, he or she is required under the Act to report the loss to his or her personal auto insurer. If the municipality were found to be liable for the accident, the municipality's auto liability insurer would reimburse the motorist only for his or her deductible or for the uninsured portion of the loss. The motorist's personal auto insurer pays for any loss above the deductible.

The important thing to remember is to respond to problems and known defects quickly and to document when you became aware of any defect. A good complaint intake and tracking system (see Appendix VIII) can help tremendously in defending cases with little or no merit. Defense counsel assigned to defend the public entity in litigation greatly appreciates records, time-lines and particularly photographs. Photos really are worth a thousand words.

Recent Pennsylvania court decisions are holding municipalities responsible for notifying PennDOT of traffic control problems where State highways and municipal roadways intersect. If you know of an intersection where there have been numerous accidents, and an upgrade in traffic control may be justified (e.g. from two to four way stop, adding a traffic signal, restricting left turns), notify PennDOT in writing and ask them to perform a traffic study. Follow-up with the Department on a regular basis.

Questions occasionally arise about the liability of repairing a dangerous condition such as a pothole in a State highway or county road. If you know of a dangerous condition, notifying the proper agency is essential. If the defect creates a serious hazard, you should warn the motorists of the condition with cones or even consider closing the road. If you decide to warn the motorists or go as far as to repair the defect in another agency's road, you may be held responsible for negligently warning or negligently making the repairs.

For more details on how applicable case law has re-defined the eight exceptions over the years, be sure to contact your Solicitor or insurance company's defense counsel.

A final note on immunity. A separate statute, the Pennsylvania Recreational Land Use Act of 1968, confers immunity to any property owner who makes their land available to the public for recreational use free of charge, provided the real estate is unimproved land.

Municipalities, for several reasons should not rely on the damage cap as a reasonable barometer for setting their insurance limits of liability. In addition to suits brought in state courts, municipalities are also subject to legal actions under federal laws. Federal judgments against the municipalities and their public officials are not limited to the state cap of \$500,000. Therefore, in order to be adequately protected, a municipality needs to purchase higher limits than the state cap. On this same subject, case law in the past has stipulated that delay damages may be awarded on the full award by the jury, not just the reduced or molded cap limit. These delay damages which are awarded to the plaintiff based on loss of interest earnings for the time it took to resolve the matter in the Commonwealth's court system, are *in addition* to the cap limit. Delay damages on the full jury award plus compensatory damages could result in the total award exceeding the \$500,000 cap by several hundred thousand dollars. A Pennsylvania Supreme Court case struck down the practice of awarding delay damages against the full jury verdict. In *Allen v Pennsylvania Department of Transportation*, the Pennsylvania Supreme Court ruled that delay damages should only be assessed against the capped damages rather than the entire jury verdict.

Municipalities and public officials involved in litigation in the U.S. Federal court system or administrative law system will discover plaintiffs typically alleging some constitutional violation of their civil rights. Cases may involve wrongful discharge or disciplining of an employee, zoning land use issues, discrimination in hiring or awarding contracts for service, licensing, restrictive ordinances and deprivation of due process. The best advice is to get legal advice *before* taking action that may result in a Federal complaint. A labor attorney is a good source of advice on any personnel matter. Ask yourself if your actions are justifiable and defensible. Always document conversations and follow legal advice.

Employment practices liability is a new and growing area of litigation in Federal court today. Employees have a new sense of awareness about their rights under Federal anti-discrimination statutes. If you are considering taking action:

- Establish grounds for disciplinary action, with good documentation.
- Use progressive discipline and be patient.
- Document all discussions with the employee, performance reviews and warnings.
- Ask employees to acknowledge, in writing, receipt of performance reviews.
- Seek advice of experts.

Federal actions may be brought for alleged violations of Federal statutes (e.g. Family Medical Leave Act, the Equal Employment Opportunity laws, including age or disability, etc.) or for allegations of civil rights violations under the following amendments to the U.S. Constitution:

- First – Freedom of speech, religion and the press.
- Fourth – Freedom from unlawful search and seizure.
- Fifth – Right against self-incrimination.
- Sixth – Right to counsel and fair trial.
- Eighth – Right to reasonable bail, no cruel and unusual punishments.
- Fourteenth – Guarantee of due process of law and equal protection of laws.

For any Federal allegations, seek the advice of attorneys familiar with defending Federal court cases. Attorneys assigned to defend municipalities in Federal cases by insurers are good sources of advice and counsel. Regularly attending training programs offered by law firms, municipal associations, insurers and pools is a good way to stay on top of changing case law and liability exposures in general.

It is not necessary for the municipal professional to become well versed in the inner workings of a complex insurance program, but some familiarity is helpful. More importantly, how you manage the municipal assets under your control will have a direct bearing on losses paid by the insurer and ultimately on the premium paid by the public entity.

## II. Types of Municipal Insurance

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A typical municipal insurance package includes the following policies:

**General Liability** – provides legal defense and indemnification for claims filed by third parties alleging bodily injury or property damage caused by the negligent condition of the premises, operations or products of the municipality.

**Automobile Liability** – provides legal defense and indemnification for the negligent use of a licensed motor vehicle.

**Automobile Physical Damage** – provides collision and comprehensive coverage for damage to automobiles owned by your organization.

**Public Officials Liability** – provides coverage for damages (other than property damage and bodily injury) caused by the wrongful acts of public officials acting within the scope of their official duties. This coverage form also typically provides coverage for employment practices liability.

**Police Professional Liability** – provides liability coverage for the professional exposures associated with providing law enforcement services.

**Property / Boiler and Machinery** – provides coverage for first party (municipal owned) real and personal property losses.

**Workers' Compensation** – provides no-fault coverage for employees injured within the scope of their employment. Benefits include payment of medical costs and lost wages. Also covers work-related diseases.

**Crime** – provides coverage for the organization's money and securities lost as a result of criminal activity or lack of fidelity on the job.

**Employee Benefits** – a variety of insurance coverages offered to employees and their dependents as part of an employment package. Examples include term life insurance, health insurance, short and long term disability.

### Property Insurance

**Buildings and Contents.** A property policy provides coverage for real (other than land) and personal property owned by the municipality.

The property insurance policy should include an up-to-date list and current valuations of all municipal-owned buildings and contents. Perils should be insured on "All Risk" basis and replacement cost new coverage should apply to all buildings and contents. Property insurance is written on a "location" basis. If a property location is not shown on the policy, the site is not insured. Consider adding automatic coverage for newly-acquired property, subject to a maximum limit if reported within 90 days. Furthermore, if municipal-owned property (including records) is stored offsite and away from an insured location, the policy will need to address coverage for property off premises.

A coinsurance clause may be included in this type policy as a negative incentive for the insured to inadvertently under-report property values to the insurer. If the property values are understated, the coinsurance percentage (usually 80% or 90%) will be used to reduce the amount paid in the event of a loss. In effect, the municipality will be partially self-funding the loss. It is important to keep property values current when coinsurance is used. This can be done inexpensively through an appraisal service or through the municipal engineer. Some insurers offer inflation guard protection to automatically increase property values with each

renewal based upon cost indexing. Another option is to insure the property on an agreed amount basis. In exchange for the additional premium, the insurer will pay full replacement cost up to the agreed amount of value for each building and its contents that were damaged or destroyed.

**Earthquake and Flood Coverage.** A typical property policy excludes losses caused by these two high-risk perils, in effect resulting in the perhaps unintentional assumption of these risks by the property owner. Both flood and “quake” losses fall into the low frequency, high severity loss category—risks that are recommended by most risk managers for transfer to insurers. Optional flood and quake coverage, perhaps with sub-limits and higher deductibles, may be available from the municipality’s property insurer for an additional premium. Another source of flood coverage, for the municipality and its residents alike, is the National Flood Insurance Program. In order for residents to secure coverage, local governments must adopt floodplain management measures by ordinance in order to permit property owners to be eligible for federally subsidized flood insurance.

**Inland Marine.** This policy provides coverage for mobile equipment, such as off-the road, unlicensed contractor’s equipment. Equipment covered includes items such as street sweepers, graders, portable welders, backhoes and portable radios. (The term “inland marine” emanates from the very broad coverages typically found in marine policies covering goods shipped overseas. Inland marine extends the same coverage to land-based mobile property.)

**Boiler and Machinery.** This coverage insures against loss to a building and contents due to explosion of boilers or pressure vessels and broad coverage for mechanical failure of machinery, electrical and air conditioning equipment (other than for wear and tear). This type of policy carries an inspection service by the insurer that is both beneficial to the municipality and the insurer. Coverage should be on a repair or replacement basis, not actual cash value.

**Time Element Property Coverage.** Property losses related to the passage of time may be insured. The coverage not only addresses how much coverage may be required but also for how long. Be sure to review these exposures with your broker or agent. Examples include:

- *Business Interruption* provides coverage, during a pre-determined period of time, for a loss of net income and continuing expenses after a business suffers a covered peril.
- *Extra Expense* coverage pays for added expenses required as a part of a property loss, such as renting temporary office space or storage space, while the municipal facility is being repaired after a covered loss.
- *Electronic Media* provides business interruption coverage caused by the loss of EDP records.
- *Accounts Receivable and Valuable Papers* provides coverage for the added cost of reconstructing important records lost or destroyed as a result of a covered loss.

**Builders Risk.** This policy is required if the municipality is constructing a new building. The policy may be provided by the contractor as stipulated in the specifications or by the owner’s (the municipality’s) insurer. Builders risk is a “bridge” policy providing coverage for the loss of a partially constructed building. The contractor should be responsible for insuring the materials stored on-site that he or she owns, which will ultimately be used in the construction. The owner will not begin insuring the building until the owner accepts title to the finished product. Without Builders Risk coverage, a loss of the materials used in the construction may amount to a substantial uninsured exposure as the building nears completion.

**Business Auto Policy.** If a municipality operates one vehicle or a fleet of vehicles, a business auto insurance policy is a necessity. The policy provides liability coverage (bodily injury and property damage) and first party auto physical damage coverage (collision and comprehensive). The named insureds should include the municipality and its elected and appointed officials and employees. (Act 6 of 1990 that reformed the Motor Vehicle

Financial Responsibility Law in Pennsylvania applies only to private passenger vehicles and not to vehicles owned and operated by municipalities.)

Coverage should be extended to include hired and non-owned vehicles thereby protecting the municipality when an employee uses a personal vehicle on official business or leases or rents a vehicle. For non-owned coverage, the employee's personal auto coverage is primary in the event of a loss and the municipality's coverage would be excess of the personal insurance.

If the municipality insures fire, ambulance, and police vehicles, it is advisable to consider an emergency equipment endorsement covering the various types of customized emergency equipment installed on emergency vehicles. Normally, coverage is not extended under the business auto policy for equipment not permanently attached to the vehicle. Consider adding language such as "snow plow, spreader when attached to the vehicle" or make sure the equipment is covered under an inland marine policy.

## **Liability (Casualty) Insurance**

**Commercial General Liability (CGL).** Generally, this policy protects the municipality, its boards, commissions, officials, employees and volunteers from third party actions alleging bodily injury, property damage and personal injury resulting from the operations of the municipality or the ownership of its premises. Slips or falls by the public visiting a municipal building is a typical premise-type claim covered by a CGL policy. The policy, originally limited to premises when first issued hundreds of years ago, has been expanded to include operations, completed operations, products, incidental medical payments, host liquor liability and fire legal liability. It also extends coverage to personal and advertising injury exposures such as libel and slander. Contractual liability is provided for liability assumed by the municipality under a contract, subject to the terms and conditions of the policy.

Most CGL policies are now written on an Occurrence form rather than a Claims-made form. Most now contain both a per occurrence limit and an aggregate limit.

The CGL policy will typically exclude police operations, employment practices and wrongful acts by public officials, necessitating municipalities to purchase one, two or three additional liability policies.

**Public Officials and Employment Practices Liability (Errors and Omissions).** This insurance provides coverage for damages caused by the alleged "wrongful acts" of public officials. Its private sector counterpart is Directors and Officers coverage. It excludes coverage for property damage and bodily injury. Claims usually arise from decisions made by elected or appointed officials that allegedly cause loss of revenue, a loss of a property right, planning and zoning issues, licensing, free speech, privacy and alleged Constitutional violations. If Employment Practices were not excluded from the Public Officials policy, this policy would also provide coverage for actions related to the hiring and firing of employees and discrimination in employment.

Typically, a Public Officials policy is usually written on a Claims-made basis.

Suggested minimum coverage is \$1 million with a reasonable, affordable deductible which may range from \$1,000 to \$10,000 depending upon the size of the municipality and its ability to pay.

**Police Professional Liability.** Any municipality providing police service needs to purchase this coverage. This insurance provides coverage for alleged violations of civil rights caused directly or indirectly by a police force. Allegations typically include false arrest, false imprisonment, wrongful entry, excessive force, pursuits, property damage, personal injury (verbal abuse), bodily injury (physical), errors and omissions, humiliation, civil rights violations, denial of medical treatment, prisoners' claims and impounded property. A typical minimum limit is \$1 million with a deductible of \$1,000 or \$10,000, depending upon the size of the municipality and its ability to pay.

**Umbrella or Excess Insurance.** An umbrella or excess liability policy sits atop the underlying policy(ies), extending limits and/or enhancing coverage. Many times, the terms are improperly used interchangeably. The typical excess policy extends limits of the general liability, automobile liability and employers liability (Part B of the workers' compensation policy) policies, usually in blocks of \$1 million. An excess policy responds only when the underlying per occurrence or aggregate limits are exhausted. An excess policy that identically matches the terms and conditions of the underlying policies, without additional exclusions or conditions, is said to "follow form." An umbrella policy, in addition to extending limits of coverage, may offer coverage enhancements on a "first dollar" basis. In effect, the umbrella insurer, for these broader coverages only, will "drop down" and act as a primary insurer. Therefore, as a way to illustrate the proper use of the two terms: all umbrella policies are excess policies, but not all excess policies are umbrella policies!

## **Crime Coverage and Public Officials Bond**

Public officials bonds guarantee the honesty and the faithful performance of elected and appointed officials. Bonds are not two-party insurance contracts but contracts of suretyships involving three parties. The principal or obligor (the public employee) is required to perform in a certain manner to the satisfaction of the obligee or creditor (the public employer). The surety (bonding company), in exchange for the premium, guarantees that the principal will fulfill the requirements of the obligee. With insurance, the insurer is responsible to the insured, it pays losses on the insured's behalf and typically does not subrogate against its own insured for recovery of any loss. With a surety bond, the surety is responsible only to the obligee, does not expect to pay losses for the obligor and fully expects recovery from the principal. As an analogy, a surety is like a co-signer of a loan.

Some position bonds are required by the municipal codes or statutes, such as tax collectors and treasurers. Other officials responsible for handling money may be required to be bonded by local ordinance, including the municipal secretary, the chief elected official and certain clerical staff. As a guide, the amount of bond should equal the maximum amount of cash, checks and securities under the control of the official at any one time.

A fidelity or honesty bond deals solely with the honesty of the principal. A faithful performance bond generally covers both honesty and faithful performance of duties. A blanket bond is a single bond written to cover numerous officials or employees. This type of bond would pay any loss by any employee covered under the blanket protection.

Public employee bonds are typically wrapped into crime policies that provide coverage for money and securities lost or stolen inside and outside the premises.

## **Employee Benefits**

### **Workers' Compensation**

Although typically considered a benefit, workers' compensation coverage actually had its roots in liability coverage. In the early 1900s, the only recourse for employees injured on the job was to file a lawsuit against his or her employer and prove negligence, a difficult threshold to achieve. Workers' compensation coverage was offered as a litigation reform measure or compromise: employers agreed to provide mandatory no-fault coverage to employees injured within the scope of their employment and employees relinquished their right to sue their employers. Benefits include payment of medical costs and lost wages and the coverage was amended in later years to include work-related diseases. Act 115 of 2001 included hepatitis C as an occupational disease covered by workers' compensation for the occupations of fire, police and emergency service personnel.

Furthermore, municipalities are required to provide workers' compensation coverage to the following volunteers if the company or corps is domiciled within their boundaries:

1. Volunteer Fire Fighters
2. Volunteer Ambulance Corps
3. Volunteer Fire Police
4. Volunteer Special School Police
5. Volunteer Rescue and Lifesaving Squad
6. Volunteer HazMat Team

Police involved in undercover drug task force operations sponsored by the state Attorney General's office should be covered for workers' compensation by the Commonwealth for injuries or illnesses resulting from these operations.

Occasionally, volunteer ambulance or fire companies create paid positions. The municipal workers' compensation insurer does not provide coverage for paid employees of volunteer fire or ambulance companies. Under the Act, the employer is responsible for providing workers' compensation coverage and the volunteer company would be required to purchase separate coverage for its employees.

Workers' compensation provides a wage loss benefit of up to 66 2/3% of the injured worker's normal wage, subject to any statutory minimum and maximum weekly wage. In the case of paid police, firefighters and park guards who are *temporarily* disabled as a result of an on-the-job injury, the municipality is obligated to pay the balance of salary (33 1/3%) out of their own funds under the Heart and Lung Act (Act 477 of 1935). Municipalities may decide to purchase optional disability insurance to cover this added risk, or they may opt to retain the risk and make the payment out of an appropriate payroll account.

## **Unemployment Compensation**

Unemployment compensation insurance provides coverage when unemployment compensation is owed a former employee or employees. State law requires Pennsylvania local governments to fund this financial obligation using one of two methods: contributory insurance or by reimbursement.

Contributory unemployment compensation is the more typical method. Municipalities pay a quarterly fixed charge to the Commonwealth for coverage. The rate is set as a percentage of payroll. The advantage of this method is that the payment is relatively easy to predict. The disadvantage is that it can be an unnecessary expense for an organization with little or no turnover.

Only municipal governments and nonprofit agencies are permitted to choose a second option, to reimburse the unemployment compensation fund for claims paid in its behalf. If a municipality decides to reimburse the fund, it should establish a reserve account or fund as a way to pre-fund the liability in the event of a claim or series of claims. If the municipality is forced to lay off employees for economic reasons, the total reimbursement costs could be substantial and poorly timed. A few state associations have formed unemployment compensation pools providing a more secure method of funding the financial risk common with the reimbursable method.

In all cases, the Commonwealth of Pennsylvania's, Bureau of Employment Security determines who is and is not eligible for unemployment compensation benefits. The Commonwealth also sets the amount to be paid in benefits. The method chosen (contributory or reimbursement) should be based on solid analysis of past loss experience and informed, conservative projections about future economic circumstances.

## Health Insurance

Health insurance is an employee benefit provided by the municipality to its employees and their dependents. Typically, it provides payment for hospitalization, outpatient medical services, ancillary medical services and prescription drug costs. Employees may be expected to share in the costs either with co-pays, deductibles or contributions towards the premium. Several plan types may be offered:

**HMO:** Typically, the option with the most controls and lowest costs (managed care). Limits access to specialists. Subscribers are required to first seek treatment from a pre-selected primary care physician (PCP). The PCP controls access to specialists through a referral. Specialists used by the PCP for referrals are generally part of a small network offering steep discounts. Employees only pay a very low co-pay for PCP office visits and visits to referred specialists.

**Point of Service (POS):** Still a managed care environment, but offering some out-of-network coverage for an employee who seeks treatment without a referral from a PCP.

**Preferred Provider Organization (PPO):** A non-managed care product that is a hybrid between the expensive traditional indemnity coverage and an HMO. Offers lower co-pay incentives to stay within a PPO network of physicians, but provides out-of-network coverage without referrals.

**Indemnity Plan:** The modern day evolution of the traditional “hospitalization and medical/surgical” product originated by Blue Cross and Blue Shield in the 1930s. It allows the broadest access to hospitals, physicians and specialists, subject to the payment of co-insurance requirements and the satisfaction of annual individual / family deductibles. Generally, this product is being phased out due to high costs caused by high utilization, and to a certain degree, by the popularity of the new low co-pay options.

## Short and Long Term Disability / Group Life

Group health, life and disability insurance may be considered personal risk management tools. Although it may be preferential to simply choose to avoid getting sick as the risk control technique (see Chapter III) when it comes to illness, in all likelihood, several risk financing methods may also be needed. The financial consequences of an extended illness may be extraordinary. Besides the medical bills for hospitalization and physician services (see Health Insurance above), the loss of income of a family member may adversely affect the family’s lifestyle and livelihood.

Short and long term disability coverage provide a percentage of the income loss resulting from a non-occupational injury or illness. Typically, short term provides coverage from a few days after the loss up to six months. Long term picks up at 6 months and continues for several years. The benefit is a percentage of regular pay that may vary from 50 to 75%. Short and long term insurers will medically monitor diagnosis, prognosis and may suggest alternative employment if the disability is more specific to a particular occupation than it is permanently disabling.

Many municipalities self-fund short term coverage by allowing employees to accrue full or partially paid sick leave. Many municipalities allow unlimited accrual of sick leave, which limits the need for short and long-term disability insurance to the first few years of employment, until such time that an employee accrues enough sick leave to fully cover most short and long-term disabilities. Too often, employees overlook the importance of maintaining a good sick leave balance, choosing instead to use sick leave as if it were additional paid days off.

Most municipalities provide life insurance in a specific dollar amount or as a percentage of salary. The amount offered through a group life policy is not enough to fully provide for the needs of one’s dependents. It is advisable to consult a financial planner in regards to adequacy of coverage.

## III. Public Risk Management

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A public risk manager may insist that this Primer be written in reverse order. The first few chapters were written with an implied emphasis on the importance of insurance administration, not risk management. Risk management is an in-depth process and purchasing insurance is just one step in the process of selecting a risk financing technique.

At the outset, try to imagine how your municipality might perform its duties differently if insurance were not available. Although many of public entities are already conducting their affairs in a highly professional manner, an even more heightened level of concern and attention might be the end result of an imaginary world of no insurance. Perhaps the organization might discover a new incentive to aggressively manage risk with a concentrated focus on loss control.

By following the risk management process and applying certain techniques, the frequency and severity of accidents can be reduced. The risk management process applies the scientific problem-solving model to protecting assets:

1. Identifying assets subject to potential loss.
2. Analyzing risk exposures.
3. Examining alternative techniques for dealing with the exposure.
4. Selecting the most promising technique.
5. Implementing the selected technique.
6. Monitoring the results to see if the exposure has been dealt with effectively.

### 1. Identifying Assets and Loss Exposures

Public risk managers use many tools to identify assets and how those assets are exposed to potential loss. Examples of these identification tools include:

- General observations
- Personal inspections and site visits
- Claim forms and accident reports
- Checklists
- Inventory
- Surveys and questionnaires
- Financial records and budget information
- Records, files and archives
- Complaint forms from citizens (see Appendix D)
- Minutes of board meetings
- Interviews
- Experts

There are five main categories of risk exposures for public entities:

- Physical Property
- Loss of Income
- Contingent Expenses
- Human Resources
- Legal Liability

All of these assets can be exposed to perils that may result in a total or partial loss. The art of risk management is to make sure all assets have been identified and then to find ways to counteract identifiable perils. Perils include: acts of nature, human acts, property losses, indirect exposures and third party liabilities.

As an example, let us identify what could happen to a major public facility. It could be subject to loss because it is a building: collapse, corrosion, explosion, fire, obsolescence, failure of environmental controls (heat or air conditioning). It could be subject to loss because of *acts of nature*: land movement (earthquake, erosion, landslide), water damage (flood, sewer backups, sprinkler system), windstorm (tornado, hurricane), lightning or falling objects. The building may also be subject to loss caused by *human acts* (vandalism, arson, civil disorder, accidents). A contractor could slip on grease in one of the bays and sue to recover for his or her injuries (liability).

The final peril-losses of income and additional expenses or expediting expenses-are often overlooked. A municipality could rely on water revenue receipts to pay capital costs financed through bonded debt. Perhaps revenue from swimming pool receipts is essential to keeping the facility open. What would happen if the revenue stream were interrupted? How long could you continue to operate? These indirect exposures typically have a time element associated with the loss. The exposure is measured in how long you could operate without an asset, what additional expenses are needed to continue operating in at least a limited manner and what expenses are needed to expedite a fast return to normal operations.

The municipal workforce is an important asset but subject to any number of exposures including injuries both on and off the job, physical illnesses, mental illness and death. Employees can decide not to show up for work or they could find other employment. Studies have shown that good personnel management does make a difference in loss experience. One study looked at pairs of companies, similar in work force size, geographical sector and industrial operation, but dissimilar only in that one pair had half as many work place injuries as its counterpart. The study found eight reasons for the substantially lower loss rates:

1. Greater management concern and involvement in safety matters.
2. More open, informal communication between workers and management.
3. Tidier work areas, better ventilation, better lighting and less noise.
4. Work force comprised of older, married workers, with longer service and less absenteeism and less turnover.
5. More understanding of the use and effectiveness of measures other than suspensions and dismissals when safety rules were violated. More emphasis is on placed coaching and counseling.
6. Greater availability of recreational facilities for workers during off-hours.
7. Greater efforts to involve worker families in safety campaigns and awareness, both on and off the job.
8. Well defined selection, placement and job advancement procedures with opportunities for training and developing new skills.

How are the entity's financial assets subject to potential loss? Financial assets may be threatened by human acts, for example: employee dishonesty, burglary, robbery and fraud. Today, litigation through third party actions is a major concern of public officials (allegations of negligence, products liability, personal injury, contractual liability, auto liability, property of others in your care custody and control).

Risk identification is an ongoing process. To help, the Appendix VI includes copies of a peril and exposure survey form.

## **2. Analyzing risk exposures**

After identifying assets and how these assets are exposed to loss, it is now appropriate to begin to analyze the risks. Notice that the Perils and Exposures Survey form found in Appendix VI has a series of columns for you to evaluate the degree of expected loss frequency and expected loss severity. This is a worthwhile exercise to help you identify appropriate risk control and risk financing techniques. Frequency is how often an event is likely to occur and severity is the level of hardship created by the loss. Grids with high and low frequency on one axis and high and low severity on the other axis can help pinpoint using both measures. A risk manager will apply much different risk control and risk financing techniques to a high frequency/low severity risk than to a low frequency/high severity. Appendix II also contains a loss analysis grid, which may be a helpful tool to identify patterns in your municipality's five-year loss history.

Examples of high frequency/low severity risk are minor auto accidents or medical-only workers' compensation claims. Financially, these types of claims are both affordable and fairly predictable. Low frequency/high severity claims are intermittent and costly.

## **3. Examining Alternative Techniques**

The next step in the risk management process is to examine alternative techniques to address the exposures. There are two main methods of managing risk: risk control and risk financing techniques.

The primary risk control measures are:

- Avoidance
- Prevention
- Reduction
- Separation
- Duplication
- Contractual Risk Transfer

*Avoidance* is the most effective risk control measure. If the elected officials decide not to offer municipal police services, they have avoided the risks associated with operating a police department. These exposures include third-party liability claims resulting from allegations of false arrest or abuse of force and workers' compensation costs associated with a high-cost payroll classification, among others. Deciding whether or not to set-up a water utility or to offer refuse collection services or to build a skateboard park are other examples. Considerations include: the claims resulting from failure to supply or the effectiveness of the water treatment, the higher frequency and severity of workers' compensation costs for refuse workers and the likelihood of injury from a youth-oriented sport.

Some argue that this is not true risk avoidance, claiming other agencies or businesses will need to offer the public safety, public health or recreational services if you do not. They argue that is actually a non-contractual risk transfer to another organization. In any event, the important concept is that avoidance of risk for your organization is a very effective method of controlling risk.

The next most effective technique is *prevention*. If the policy makers decide to offer a municipal refuse collection service, avoidance is no longer a viable risk control option. The focus now shifts to preventing a loss from occurring. Public works employees can be trained how to lift properly and how to stay in good physical condition in order to avoid back injuries. Training programs on how to safely operate the vehicle in and out of traffic, how to safely work in traffic, how to travel on the back of the packer, and even how to deal with irate citizens to prevent a liability claim all may help prevent losses. Maintaining the equipment properly to prevent a malfunction that may lead to downtime, more extensive damage and injuries to workers and others are preventive measures.

If it is impossible to avoid the exposure or if the preventive measures fail, the next approach focuses on containing the effect of a loss. *Reduction* addresses the severity of the loss. Seat belts are a loss reduction device. Seat belts do nothing to prevent the accident itself, but once the accident occurs, they are very effective in lessening the injuries to the driver and passengers. A sprinkler system or fireproof filing cabinets are other examples of risk reduction measures. Personal protective equipment such as gloves, safety shoes, eye protection, hard hats and back braces are loss reduction measures.

Managers must guard against becoming too complacent about the effectiveness of personal protective equipment. It is easy to overlook the injuries that did not occur because of luck or good fortune (the “near miss”). Part of first line management’s responsibility is to be cognizant of when preventive and reduction measures work. Remind workers and top management of instances when the hardhat absorbed the shock of a falling object, or the safety shoe protected the foot from a “struck against” injury, or the worn-out gloves protected hands from sharp objects or the reflective safety vest allowed motorists to see a highway worker.

Risk control does not stop with an accident. Training on how to conduct oneself at the scene of a vehicle accident, how to report an accident and how to care for those who are injured can help keep a small accident from becoming a large loss. A sample Accident Investigation Form and Driving Record Form are provided in Appendix III and IV. Consider taking photographs after the accident to record how the scene looked at the time. Post accident work is an essential loss reduction technique. Planning for post-loss by video taping or taking analog or digital photos of buildings and contents *before* the loss can help provide proof of assets to insurance adjusters.

Another risk control device that may have applications in selected circumstances is *separation*. Divided highways and keeping flammable materials away from sources of ignition are two very different examples of applying separation to control risk. Similarly, duplication may help prevent a loss or reduce its impact. A tape backup of computer files is a good example of duplication. An example of using both duplication and separation is to take the tape backup offsite. The files were duplicated with the backup and, as a further protection, the files were separated from the computer site in case the building housing the computer suffered a loss.

Finally, *contractual risk transfer* is a technique that is fairly involved and requires expert legal help. The intent is to transfer your operations to another organization and to specify that the other organization is to manage the operation as if they were the owner. For example, a municipality may own a small airport, but may not wish to obtain the expertise or staff-up to a level needed to operate the airport. The municipality may opt to contract with a fixed base operator to manage the airport and assume all of the aviation risks of the owner. This technique should not be confused with financial risk transfer that is addressed later in this publication.

Besides testing for significance using frequency and severity, a risk manager also will need to consider the objectives of the organization in choosing appropriate risk control and risk financing techniques. For example, the policy of the organization may be that under no circumstances is the public works garage ever to be out-of-service. A strong organizational objective like this, heavily impacts on the risk management operation. To meet this forceful of an objective, management will need to consider a number of factors including 24-hour security, liquidity of emergency funds, computer backups and hardware support, dedicated telephone lines, power generators, time element insurance coverage, emergency lighting, building construction materials, on-site fire suppression systems, etc.

**Risk Financing:** Besides risk control, the risk manager must also apply a risk financing technique. Risk managers apply at least one risk control technique and one risk financing technique to an exposure—usually more. The primary risk financing measures are:

- Transfer
  - Insurance
  - Financial Risk Transfer
- Retention
- Risk Sharing

As outlined above, insurance is the most widely used risk financing technique for small to medium-sized public entities. Insurance is a contract between your municipality and an insurer where the insurer agrees to indemnify the municipality in the event of a loss—subject to the terms, conditions and limitations of the contract in exchange for payment of the premium. A typical insurance policy requires the insured to report claims in a timely fashion and to cooperate fully with the insurer during its investigation of the claims. For third party liability claims, the insurer has the authority to decide whether or not to settle with the claimant or to defend the allegations in court.

*Financial risk transfer* requires another party in a contract to assume and finance the municipality's risk under the contract. This is handled by adding a hold harmless clause to the contract (see Appendix V and IX), by specifying what type and how much *insurance* the other party needs and by requiring your public entity to be *named as an additional insured* to their policy. When the municipality hires a contractor to repave a street, the public officials do not want to be in a position of defending and paying liability claims emanating from the repaving work simply because the municipality owns the street. The contractor should agree to insulate the municipality from claims resulting from their work by agreeing to defend and indemnify the municipality in the event of a claim, but agreeing to assume this risk is not enough. The contractor must show proof of financial responsibility to support the hold harmless clause. The contractor's agent will issue a *certificate of insurance* showing proof of coverage. The certificate should show the public entity named as an additional insured to fully protect your interests.

Insurance is not the only way to finance risk. In fact, it is generally regarded to be the most expensive risk financing alternative, but in most circumstances, also the most effective. A municipality may choose to *retain* risk. The term *self-insurance* is commonly used interchangeably with *risk retention* even though the term is somewhat of a misnomer. It is always the public entity's risk, unless it chooses to transfer the risk to another party like an insurer. Since insurance refers to a method of transferring risk, self-insurance improperly implies a transfer of risk to oneself.

The term *self-insurance* does help to distinguish a pro-active risk management approach from *non-insurance or uninsured*. The term *non-* or *un-*insured infers that a risk was overlooked and unbudgeted requiring the municipality to pay for a loss out of fund balances without the opportunity to plan for the expense. *Risk retention*, *self-funding* and *self-insurance* all imply a concerted effort to pre-fund losses using a dedicated risk management fund or account. Choosing the reimbursable method of paying unemployment insurance is a decision to self-fund the risk. On a larger scale, municipalities rarely buy property insurance to cover infrastructure such as streets, highways, bridges and underground utility systems. The pricing is usually cost prohibitive and the exposure to loss is different from most buildings, upon which property insurance premiums are typically based. The risk financing technique typically applied to underground infrastructure is capital planning and capital financing using bonded debt. This further illustrates the importance of following the risk management process. Although insurance will continue to be the primary risk financing technique applied by Pennsylvania municipalities, other methods are at times not only more cost effective, but also better.

Deductibles are a type of self-funding, although technically the risk has been transferred to the insurer. Since it is expensive for insurers to process and pay small claims, they will offer premium discounts to insureds who are willing to assume smaller losses. For some coverage lines, insurers insist on deductibles because of the uncertain nature of the risk. The special municipal lines of Police Professional and Public Officials Liability usually are written with deductibles of a few thousand dollars.

A broad commitment to risk retention should not be undertaken without first preparing a feasibility study and pro forma financial statements, generally with the help of a competent, independent consulting firm. Limited self-funding, such as establishing a fund to pre-fund higher deductibles, can be undertaken with a simple cost benefit analysis. If the municipality's loss history has been above average and the premium savings from assuming the higher deductible would eventually pay for the expected losses over a reasonable amount of time, limited risk retention may be a viable option. Generally, municipalities should limit retained risk to low frequency / low severity, or to a lesser extent, high frequency low severity types of exposures. These risks generally include auto physical damage claims, incidental medical costs (first aid) under workers' compensation and glass breakage property losses.

Under current Pennsylvania law, you must apply for permission from the Pennsylvania Bureau of Workers' Compensation before self-funding workers' compensation. Also, the Department of Transportation's Bureau of Motor Vehicles will require notification of your self-funded status if you decide to self-fund auto liability and / or auto physical damage.

Finally, to complete the discussion on risk financing, there are now hybrids that bridge the gap between self-funding and risk transfer. Some municipalities have united to form risk-sharing pools through state associations and intergovernmental agreements. Pools offer the advantages of risk retention to small and medium-sized public entities. The municipal member transfers the risk to the pool and simultaneously becomes a part owner and trustee of the pool and its operations. There are a number of municipal liability and workers' compensation pools operating in Pennsylvania today. Pooling is authorized by the Pennsylvania Workers Compensation Act as amended, the Political Subdivision Tort Claims (Governmental Immunity) Act and Act 180 of 1972, the Intergovernmental Cooperation Act.

The advantages to retaining risk, either collectively through pools or by self-funding, include:

- Saving the costs of insurance company overhead, profit and taxes that are a part of the premium charged by insurers.
- The pool or self-insurer retains investment income, not the insurer.
- Control of the disposition of claims and lawsuits.
- Instilling incentives for adopting aggressive loss control measures and providing the technical support.
- A public orientation and tailored coverages to meet unique municipal needs.
- A continuity of coverage-market stability when the availability and affordability of commercial insurance may be constrained.

The disadvantages are:

- Funding integrity for reserves and other liabilities must be guaranteed.
- Pools are assessable, and if additional money is needed to stay solvent, each member must pay its fair share.
- With liability pools in Pennsylvania, a lack of regulatory oversight, requiring the municipality seeking membership to perform their own financial review and due diligence.
- Long term commitment on the part of the participant.

The next steps in the risk management process require little in the way of explanation. An example will suffice. Just to recap, the remaining steps are:

4. Selecting the most promising technique.
5. Complementing the selected technique.
6. Monitoring the results to see if the exposure has been dealt with efficiently.

For the sake of illustration, we will illustrate these final steps using a simple example. We will manage the exposure created by a municipality leasing equipment for highway construction and assuming the risk through a lease. Generally, risk managers apply at least one sometimes more, risk financing technique and one risk control technique to handle an exposure. In this case, the risk financing technique will be insurance. The first step is to make sure the municipality's insurance agent adds this rented vehicle to the vehicle inventory for the period of time it will be used. In fact, the owner will insist on seeing proof of coverage through a certificate of insurance issued by your agent and being named as an additional insured to your policy. The owner wants to make sure that his or her liability as the owner of the vehicle will be covered by the municipality's insurer. An applied risk control technique would be making sure only a qualified operator uses the equipment and that the equipment will be used only for its intended purpose. Special controls to protect it after hours should be considered.

After the leased vehicle is returned, evaluate how well the risk financing and risk control techniques worked. It may be necessary to do more to control the public at the construction site the next time because of some "close calls." Or, perhaps training a backup operator in case the primary operator becomes ill during the term of the lease. Generally, there are always fine-tuning steps that can be implemented to lessen the likelihood of loss.

It is a good idea to establish performance standards. Results standards are measurable end results, such as a certain number of fewer vehicle accidents after initiating new safety measures. Activity standards measure the activities to reaching a desired goal such as the number of inspections conducted at the playground by parks maintenance staff. As loss exposures change, methods need to change.

<b>Category</b>	<b>Example</b>	<b>Loss Control Measure</b>
1. Loss of or to Municipal property	Building, furniture equipment, cash, records	Building security, fire alarms, fireproof file cabinets, building inspections, protection from flammables
2. Loss of income generating capacity	Rentals, tax records, utility facilities, fee generating operations	Training programs, accounts receivable insurance, preventive maintenance inspections of facilities
3. Liability to others through Bodily injury or property damage	Slips, falls, potholes civil rights violations, wrongful acts, concealed stop signs underground fuel tanks	Complaint response forms, training programs, inspections police pursuit and deadly force policies, tactics training, stress training, vehicle inspections, sexual harassment training
4. Contractual Liability	Contracting procedures renting property, civic centers	Hold harmless clauses, certificates of insurance, use of solicitor
5. Workforce loss	Accidents on the job or job-related illnesses or diseases	Worker safety programs, incentives, control of hazardous substances, issuing personal protective equipment

## **Organizing a Risk Management Program**

After completing the process, you can begin to address how best to organize a risk management program within a municipality. A good first step is to *appoint a coordinator*. Perhaps an administrative support person within the municipality can be assigned the duties of monitoring claims, speaking with loss control and insurance experts about applying loss control measures and coordinating with the insurance policy administration requirements.

Safety organizations like the national Safety Council consider supervisors to be a key component to any effective loss control program. Supervisors are responsible for the job site and therefore responsible for assuring that the job is done correctly and safely. Supervisors must understand that a safe work-site is their responsibility. Establishing common procedures addressing safety rules, accident reporting, emergency actions, contingency plans, compliance with state standards and laws, maintenance schedules and personnel administration are essential.

A *policy statement* is another step to consider. A policy statement establishes guidelines for the municipality's risk management program and addresses the municipality's risk management objectives, the authority of the coordinator, what to do in the event of an accident, and how and what records need to be maintained.

A *loss control committee* can help implement safety policy and safety rules. It can be given specific assignments like developing a regular inspection program, establishing an orientation program for new employees or setting up a schedule of ongoing training programs. The committee could include line supervisors, key staff members and administrators.

Some jurisdictions have organized an *accident review board* to help investigate why accidents occur. The purpose of the review board is not to find fault but to fact find. The board reconstructs accidents through an independent review of the events and by interviewing witnesses and participants. Your insurer or insurance agent can help you with the set-up.

Vehicle accidents continue to rank among the highest types of accidents within any public entity-highest in both frequency and severity. The solution is to train and manage. Monitor the accidents of your drivers, paying particularly close attention to frequency. Eventually a large number of small accidents will lead to a large loss if some measures are not taken to correct the trend. The same is true with workers' compensation claims. Safety engineers have determined statistically that if an act is performed incorrectly 500 to 600 times, even with no visible damage, it will eventually lead to 30 to 100 minor claims of injuries and one serious accident or disabling injury. Monitoring frequency is a very important loss control device. Regarding vehicular training, make it a practice to send drivers to *defensive driving classes* at least once every three years, more often if accident frequency demands it.

## IV. Purchasing Insurance Coverage

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The Municipal Codes in Pennsylvania allow officials full discretion in deciding how best to obtain insurance coverage. Purchasing insurance is expressly exempted from all competitive bidding requirements. The municipality has the choice of buying insurance through a negotiation or in a more competitive environment. As mentioned above, municipalities may also choose to participate in a risk-sharing pool, or when and if appropriate, retain risk (self-fund).

It has been said that purchasing insurance may be one of the most important and simultaneously one of the most complex tasks that must be performed by public officials. What makes it difficult, to a certain extent, is the very nature of the insurance market and how coverage is bought and sold. Too often, public officials express dissatisfaction with the whole experience, noting difficulties such as:

- Even though using one or more reputable local agent(s), occasionally a doubt remains about how competitive the purchasing process is.
- The cost of insurance seems to vary greatly from one year to the next for no apparent reason.
- If and when some degree of competition is injected into the renewal process, it seems to result in less stability.

### Agent / Broker Selection

For the most part, independent insurance agents are authorized to provide quotes for a number of insurance companies. The agents are in effect the “out-sourced” sales and marketing staff of insurers. (Insurers who are direct writers do not rely on an independent agency system). Agents are compensated by a commission when the premium is paid by the insured. In order to represent an insurer, agents must comply with certain standards imposed by the insurer. One standard may be to generate a minimum amount of premium for the insurance company in order to continue to represent the company. Some agencies and insurance companies develop market niches by writing a large amount of certain types of insurance for businesses.

Considering the above, as a buyer of insurance, what characteristics would you as a public official like to see as part of your insurance program? Consider:

- Solid, financially strong insurance companies or pools.
- Coverage designed around your municipal exposures and needs.
- A well-established, professional agency representing a number of insurers interested in writing and retaining municipal business.
- Pricing predictability.

Those close to the insurance industry contend that long-term relationships among insureds, agents and insurers are beneficial, especially during “hard” or “tight” markets. Insurance pricing and availability typically fluctuate along a five to ten year business cycle. At the trough in the market, prices are low, insurance availability is high, competition for premium dollars is heightened, coverages are broad. These are some of the characteristics of a “soft” market. At the peak of the cycle, premiums are high, coverage is narrowed, availability is greatly constricted. A hard market will show signs of increasing premium, insurers withdrawing from writing municipal business, lower limits and restrictions in coverage through more exclusions. It is this market characteristic of insurance as a “commodity” that makes purchasing and shopping insurance difficult. The current

market cycle needs to be a consideration. Many times, stability in a market-driven environment may be more of an important issue than cost. Finally, overshopping or bidding insurance too often may have a less than desired effect. If insurance underwriters prepare quotes too often without being awarded the business, they may be more reluctant to prepare quotes in the future and decline to quote.

Perhaps your municipality is content with its current program. Perhaps your agent or broker has represented your municipality's interest well in the marketplace, shopping your program only when necessary and at the right time. Furthermore, perhaps you have a longstanding relationship with one insurance company, weathering one or more major market shifts. Even if satisfied, make it a habit to meet with your insurance agent at least once a year to review coverages and assets (fleet inventory, building locations), answer any questions, discuss market trends and review loss history.

For some municipalities, the opposite may be true. What steps should you follow to shop your entire insurance program?

Because most insurers rely upon independent marketing agents to produce new business, it is not possible to simply get a quote from a number of insurers. You have to "select" the agents and brokers first before you can reach the underwriters' desks. An "Agent/Broker Selection Questionnaire" (see Appendix VII) can help you select insurance agencies in your area using qualitative standards. Less formally, request an agency biography to help in the analysis and selection process. The goal of the biography and questionnaire is to find the agency or agencies who will professionally represent your interests in the insurance marketplace, who represent a number of insurers interested in municipal business and who are themselves familiar with municipal risks. Agency selection should begin not less than nine months in advance of the renewal date.

After completing the agent selection process, if you decide one agency meets your needs, the next steps in shopping coverage are relatively straightforward. You begin the work with the agency of preparing specifications about your municipality for insurance underwriters to use in preparing a quote. Some Pennsylvania municipalities have hired risk consultants or brokers to help with the technical aspects of marketing the insurance program. The municipality directly pays the consultant or broker a negotiated fee to recommend agencies, assign insurance markets (see below) and to review proposals submitted by insurers.

If your municipality has historically placed coverage through two or more agencies, you may want to consider using two or more agents to more broadly represent your interests in the market. This may complicate the process by requiring one more step--assigning markets. Both agents may represent the same insurance company or companies and both agents will want to approach these insurers to secure a quote for coverage. Unfortunately, underwriters will respond only to one submission—only one agent can represent your interest. The insurer will ask you to issue a "broker of record letter," indicating which agency the municipality wants to receive the underwriter's quote. You assign insurers to agencies. It is always preferable to address this conflict up-front, rather than delay the underwriting process after the underwriter receives two sets of specs.

Medium Agency may submit:

#### General Liability

1. Stalwart Insurance Company
2. Liability Casualty, Inc.
3. Municipal Mutual

#### Property

1. ABC Insurance Company
2. DCED, Inc.
3. EPA Mutual

Large Agency may submit:

General Liability

1. Liability Casualty, Inc.
2. Stalwart Insurance Company
3. Municipal Mutual
4. Rock Solid Assurance, Inc.
5. Protecto, Inc.

Property

1. DCED, Inc.
2. EPA Mutual
3. ABC Insurance Company

Based simply on the priority order, you would assign Medium to represent Stalwart and ABC. Large would be assigned Liability Casualty, Rock Solid, Protecto, DCED and EPA. Note that there is a tie for Municipal Mutual since both agents listed that particular insurer third on their priority lists. A representative of the municipality breaks the tie by some method. Coin flips have been used. A more objective approach may be to ask how much business each agency does with Municipal Mutual and assign the market to the agent with the most perceived “clout.” You could ask each agent to explain why they should be assigned the insurer and select based upon the reasons they give.

## Specifications

Your municipality now must prepare a description of your risk for underwriters to review. After a brief cover letter generally describing the intent of the process, you may want to consider a four-part format:

- Part I. General Requirements
- Part II. Insurance Specifications
- Part III. Municipal Profile
- Part IV. Appendices

### Part I. General Requirements.

In this section, consider:

- The municipality reserves the right to accept or reject any or all proposals or portions thereof.
- The information contained is to be considered reasonably accurate and up to date, but it is not to be considered as a warranty.
- How to set up appointments to inspect municipal facilities.
- Who to contact with requests for additional information or clarification of the specs.
- A timetable for the process and a deadline for responding to the specs.
- Qualifications of insurers (minimum Best rating for size and financial stability) and risk sharing pools.
- Number of signed responses and copies requested.
- Requiring a submission of specimen policies.

## **Part II. Insurance Specifications.**

*Named Insureds.* A complete description of all requested Named Insureds including the municipality, all appointed boards and commissions, all appointed and elected officials, all employees and all volunteers acting on behalf of the municipality. The municipality reserves the right to request additional named insureds during the policy term.

*Cancellation and Non-renewal.* Minimum notification each party will provide to the other.

*Effective Date and Term of Coverage*

*Rating Plans:* Whether or not the municipality wants to consider retrospective or loss sensitive rating plans.

*Specific Requirements by Coverage Line*

*Optional Coverage Quotes*

## **Part III. Municipal Profile**

The more information you can provide about your municipality, the more accurate the underwriting. This description should include:

- Location within the Commonwealth and any Unique Characteristics.
- Services Provided.
- Elected Officials.
- Financial Data.
- Descriptions of Facilities, Miles of Streets/Roads, Acres of Park.
- Values for Owned Buildings and Contents, with Listing and Description (age, type of construction and any information on fire detection and suppression).
- Detailed Vehicle and Equipment List, including a Breakdown of Emergency Vehicles.
- Number Employees (full and part-time).
- Number of Uniformed Employees (full and part-time).
- Description of any Enterprise Operations such as Water, Sewer and Electric Utilities.
- Services such as Recreation Programs, Health Services and Code Enforcement.
- List of Boards, Commissions and Authorities.

## **Part IV. Appendices**

- Loss data, including number and type of insurance claims filed within the past three to five years.
- Copies of operating budget and / or independent audits.

## V. Glossary

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**Actual Cash Value.** The value of a property loss equal to replacement cost less depreciation for previous use and age.

**Agent.** A legal representative of an insurer with the authority to bind the insurance carrier to a contract or policy.

**Aggregate Limit.** The maximum amount an insurer will pay annually during the policy term.

**All Risk Property Insurance.** Covers all perils except those specifically excluded in the policy.

**Attractive Nuisance Doctrine.** Any potentially hazardous item or place that by its very nature allure the public, especially children (example: private swimming pools).

**Blanket.** Covers more than one item or person on the same policy.

**Bond.** A form of money guarantee or protection against financial loss caused by dishonest acts or nonfaithful performance of duties.

**Broker.** A representative of an insurance buyer authorized to negotiate insurance coverage for the insured.

**Claims-made Form.** Provides coverage only for “claims made” during the policy period regardless of when the injury or damage took place. Once the policy expires, no claim will be honored unless “tail” or “nose” coverage is purchased. The policy form typically further limits coverage with the use of a retroactive date. This form is typically limited in its use to specialty coverage forms such as Public Officials Errors and Omissions.

**Coinsurance.** A policy provision reducing the amount recoverable for a property loss due to the understatement of the property values by the property owner.

**Commission.** A percentage of the premium paid to an agent for the successful sale of an insurance policy.

**Deductible.** Amount of each claim or occurrence paid by the insured.

**Depreciation.** Decrease in the value of property over a period of time due to ordinary wear and tear and/or age.

**Direct Writers.** Insurers that employ their own sales force.

**Endorsement.** An amendment to a policy which revises the original terms or conditions of the policy.

**Errors and Omissions Insurance.** Insures against loss due to an unintentional mistake or omission in performance of official duties.

**Exclusion.** A peril or situation not covered by an insurance policy.

**First Dollar Coverage.** A policy with no deductible and no retention.

**Frequency.** The number of times a loss occurs in a certain period of time.

**Hazard.** A situation or condition that increases the probability of a loss occurring from a certain peril.

**Hold Harmless Clause / Agreement.** A provision within a contract under which one party agrees to assume legal liability for the other party for specified losses as respects the contract.

**Indemnification.** One party pledges financial assets to another as security or protection against loss or damage.

**Liability.** A requirement to pay a damage award due to a failure to fulfill an obligation or duty.

**Limit of Liability.** The maximum amount an insurer agrees to pay in the event of a covered loss.

**Manuscript Form.** A non-standard policy form drafted specifically to address an insured's specific requirements.

**Occurrence Form Policy.** A policy form that provides coverage for a loss event that occurred during the time the policy was in effect, regardless of when the claim is presented. Coverage would still apply even if the policy had expired, as long as the loss event took place during the policy period.

**Package.** A compilation of a number of different policy forms, combined together by one insurer, using similar policy terms and conditions.

**Pennsylvania Workers' Compensation Rating Bureau.** An independent organization created by law to set rates for the insurance industry using different payroll classifications.

**Peril.** Possible causes of a loss to an asset such as windstorm, fire, collision or theft.

**Personal Injury.** An alleged injury resulting from false arrest, malicious prosecution, wrongful entry, libel, slander, false arrest or a violation of a right of privacy. A broad injury classification that typically excludes bodily injury and property damage losses.

**Personal Property.** Anything subject to ownership other than real property. Examples include: furniture, equipment, supplies, inventory, machinery, vehicles, copyrights, patents, trademarks, licenses, money, securities

**Premium.** Money paid to an insurer by the insured to transfer risk under a contract of insurance.

**Real Property.** Land, buildings, other structures and permanent improvements

**Replacement Cost Coverage.** Coverage that will fully repair or replace lost or damaged property with a like item. (Depreciation costs do not reduce the value of the insured property).

**Retained Limit.** The amount of each loss assumed by a self-funded program, below any excess or umbrella coverage. Under a fully insured program (one in which the risk has been transferred under contract to an insurer), the amount of each loss that the insured is responsible for is referred to as a deductible.

**Retroactive Date.** A method insurers use to limit coverage in claims-made policies, by excluding coverage for any claim with an occurrence date prior to this date. The retro date can be eliminated or extended at times in exchange for additional premium.

**Retrospective Rating Plans.** A type of policy where the final premium is based upon the insured's loss experience during the policy period, subject to a minimum and maximum.

**Severity.** The degree of impact of a loss.

**Subrogation.** Acquiring rights of the insured by the insurance company for action against responsible third parties.

**Surety.** An individual or company which guarantees faithful or honest performance under a bond.

# Appendix I. General Safety Checklist

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	OK	Location if not OK	Recommendations
<b>General Policies and Practices</b>			
Each department has safety rules.	<input type="checkbox"/>	_____	_____
Injuries must be reported immediately to the supervisor.	<input type="checkbox"/>	_____	_____
Hazards must be reported to a supervisor immediately after they are discovered.	<input type="checkbox"/>	_____	_____
Supervisors are required to investigate all accidents in a timely matter and to route reports to management.	<input type="checkbox"/>	_____	_____
Smoking is permitted only in designated areas.	<input type="checkbox"/>	_____	_____
Employees reporting for work under the influence of alcohol or drugs are subject to disciplinary action.	<input type="checkbox"/>	_____	_____
Only public employees are permitted to operate publicly owned vehicles and equipment.	<input type="checkbox"/>	_____	_____
All employees who operate a vehicle must have a valid driver's license.	<input type="checkbox"/>	_____	_____
Horseplay and practical jokes are prohibited.	<input type="checkbox"/>	_____	_____
Employees must notify supervisors when taking prescription medication that causes reactions such as fatigue, dizziness or impaired vision or judgement.	<input type="checkbox"/>	_____	_____
Accident and injury reports are reviewed by supervisors and discussed with employees.	<input type="checkbox"/>	_____	_____
<b>Grounds and Building Entrances</b>			
Grounds are free of unusual hazards such as holes, protrusions and other obstacles.	<input type="checkbox"/>	_____	_____
Trees are free of loose branches or protruding roots.	<input type="checkbox"/>	_____	_____
Fences are structurally sound and free of holes.	<input type="checkbox"/>	_____	_____
Sidewalks, entrances steps and lawns are properly maintained.	<input type="checkbox"/>	_____	_____
Walkways and paved areas are free of cracks and loose pavement.	<input type="checkbox"/>	_____	_____
All doors and windows are in working condition.	<input type="checkbox"/>	_____	_____
Outside lighting is sufficient around pedestrian traffic areas.	<input type="checkbox"/>	_____	_____

	OK	Location if not OK	Recommendations
<b>Buildings and Structures</b>			
Ceilings are free of cracks.	<input type="checkbox"/>	_____	_____
Rest rooms are free of water hazards.	<input type="checkbox"/>	_____	_____
Handrails and treads in stairways are in good condition.	<input type="checkbox"/>	_____	_____
Stairway risers are of proper height.	<input type="checkbox"/>	_____	_____
Lighting in stairways is adequate.	<input type="checkbox"/>	_____	_____
Floors are free of holes, splinters, protruding nails, slippery areas and loose boards.	<input type="checkbox"/>	_____	_____
All openings in floors are covered and marked.	<input type="checkbox"/>	_____	_____
Aisles and passageways have adequate width and are unobstructed.	<input type="checkbox"/>	_____	_____
Aisles and passageways are well-defined, marked or painted.	<input type="checkbox"/>	_____	_____
Work areas have adequate lighting.	<input type="checkbox"/>	_____	_____
Work areas are well-ventilated and free of fumes.	<input type="checkbox"/>	_____	_____
<b>Fire Safety</b>			
All emergency exits are properly marked.	<input type="checkbox"/>	_____	_____
Each building has an evacuation and emergency preparedness plan.	<input type="checkbox"/>	_____	_____
Employees are trained in fire fighting or are familiar with evacuation plans.	<input type="checkbox"/>	_____	_____
Fire extinguishers and other fire fighting equipment is checked regularly.	<input type="checkbox"/>	_____	_____
Sprinkler system is in good working condition.	<input type="checkbox"/>	_____	_____
Fire alarms and smoke detectors are checked regularly.	<input type="checkbox"/>	_____	_____
Rubbish and used chemicals are disposed of properly.	<input type="checkbox"/>	_____	_____
Explosive or flammable materials are properly stored and ventilated.	<input type="checkbox"/>	_____	_____
<b>Machinery, Tools and Equipment</b>			
All machinery and equipment is maintained properly.	<input type="checkbox"/>	_____	_____
Belts, gears, chains, clutches and shafting are properly guarded.	<input type="checkbox"/>	_____	_____
Effective point-of-operation guards are in place.	<input type="checkbox"/>	_____	_____

	OK	Location if not OK	Recommendations
Equipment and facilities are free of oil or grease spills.	<input type="checkbox"/>	_____	_____
Gas cylinders are in working condition.	<input type="checkbox"/>	_____	_____
Tampering or unauthorized use of any machinery or equipment is prohibited.	<input type="checkbox"/>	_____	_____
Tools and machines are free of split or loose handles.	<input type="checkbox"/>	_____	_____
All cutting edges are sharp.	<input type="checkbox"/>	_____	_____
All tools are maintained in a good state of repair.	<input type="checkbox"/>	_____	_____
Ladders, scaffolds and horses are of standard construction and are in good condition.	<input type="checkbox"/>	_____	_____
Ladders or self-locking step stools are of an approved design.	<input type="checkbox"/>	_____	_____
Electrical tools, switch boxes and fixtures are properly grounded.	<input type="checkbox"/>	_____	_____
Wiring, fixtures, connections and extension or portable cords are safely insulated and installed properly.	<input type="checkbox"/>	_____	_____
Extension cords are free of frays and breaks.	<input type="checkbox"/>	_____	_____
All electrical wall outlets and switches are in working order.	<input type="checkbox"/>	_____	_____
<b>Housekeeping</b>			
Materials are properly stacked and stored according to established guidelines.	<input type="checkbox"/>	_____	_____
Overhead clearance is ample.	<input type="checkbox"/>	_____	_____
Work areas are neat and clean.	<input type="checkbox"/>	_____	_____
Work areas are free of hazardous materials.	<input type="checkbox"/>	_____	_____
Desks, cabinets and file drawers and/or doors are maintained properly.	<input type="checkbox"/>	_____	_____
Aisles and walkways are kept clear at all times.	<input type="checkbox"/>	_____	_____
Access to all emergency equipment such as fire extinguishers, emergency eye wash and showers are kept clear of obstacles.	<input type="checkbox"/>	_____	_____
<b>Employee Practices</b>			
All equipment and machinery is used properly.	<input type="checkbox"/>	_____	_____
Materials are loaded and unloaded safely.	<input type="checkbox"/>	_____	_____
Lifting is done in a proper manner.	<input type="checkbox"/>	_____	_____

	OK	Location if not OK	Recommendations
Assistance is available to lift or move heavy objects.	<input type="checkbox"/>	_____	_____
Safety devices are used.	<input type="checkbox"/>	_____	_____
Safety glasses, goggles, hard hats, vests, safety shoes and other protective equipment is worn when required.	<input type="checkbox"/>	_____	_____
Workers refrain from engaging in horseplay.	<input type="checkbox"/>	_____	_____
Workers are prohibited from wearing jewelry while working on or around machinery or electrical circuits.	<input type="checkbox"/>	_____	_____
Vehicles are operated in a safe manner at all times.	<input type="checkbox"/>	_____	_____
Traffic cones, warning flags and barriers are used in accordance with construction traffic control standards.	<input type="checkbox"/>	_____	_____
<b>First-Aid</b>			
Employees are trained in first-aid procedures.	<input type="checkbox"/>	_____	_____
First-aid supplies are available and easily accessible at each work site.	<input type="checkbox"/>	_____	_____
First-aid supplies are checked and replaced periodically to ensure freshness.	<input type="checkbox"/>	_____	_____
Emergency procedures and telephone numbers are posted.	<input type="checkbox"/>	_____	_____

# Appendix II. Governmental Loss Analysis

## Governmental Loss Analysis Frequency and Severity

Fiscal Year	Losses Classified According to Size										Total
	-	501	1,001	5,001	10,001	25,001	50,001	100,001	Over	100,000	
	500	1,000	5,000	10,000	25,000	50,000	100,000	100,000	100,000		
20____	Number										
	Dollars										
20____	Number										
	Dollars										
20____	Number										
	Dollars										
20____	Number										
	Dollars										
20____	Number										
	Dollars										
Total	Number										
	Dollars										
Average	Number										
	Dollars										

## Appendix III. Accident Injury Investigation Form

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<b>Accident/Injury Investigation Form</b>		
Department:	Date and time accident occurred:	
Supervisor:	Date and time accident was reported:	
Location of accident:		
Name of injured person:	Title: <i>(Address &amp; phone number if not an employee)</i>	
Names of witnesses:	Titles: <i>(Addresses &amp; phone numbers if not employees)</i>	
Injured person's supervisor at the time of injury: <i>(if different from above)</i>		
Description of injury:	Person received medical attention? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Cause of Injury:		
Type of equipment the person was using?		
Injured person's description of accident: <i>(including circumstances leading up to the accident)</i>		
Costs of medical care:	Number days of lost work:	Costs of hiring/training replacement:

**Supervisor's Evaluation:**

	Yes	No
Has a similar accident or injury happened before? If yes, when? _____	<input type="checkbox"/>	<input type="checkbox"/>
Did you know that the employee was doing this job when the injury or accident occurred?	<input type="checkbox"/>	<input type="checkbox"/>
Should the employee be doing this job?	<input type="checkbox"/>	<input type="checkbox"/>
Was the employee trained to do this job?	<input type="checkbox"/>	<input type="checkbox"/>
Was the employee doing the job correctly when the accident occurred?	<input type="checkbox"/>	<input type="checkbox"/>
Were conditions and/or equipment efficient and safe?	<input type="checkbox"/>	<input type="checkbox"/>
Has the employee done the job correctly in the past?	<input type="checkbox"/>	<input type="checkbox"/>
Has the employee ever been corrected or retrained because he or she did the job incorrectly?	<input type="checkbox"/>	<input type="checkbox"/>
Did any obstacles keep the employee from doing the job safely:	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting procedures	<input type="checkbox"/>	<input type="checkbox"/>
Conflicting orders	<input type="checkbox"/>	<input type="checkbox"/>
Lack of equipment	<input type="checkbox"/>	<input type="checkbox"/>
Rush to finish the job	<input type="checkbox"/>	<input type="checkbox"/>
Has the employee been under any stress?	<input type="checkbox"/>	<input type="checkbox"/>
Are there any morale problems among employees?	<input type="checkbox"/>	<input type="checkbox"/>
Was the job procedure awkward or unsafe?	<input type="checkbox"/>	<input type="checkbox"/>
Was personal protective equipment required for performing this job?	<input type="checkbox"/>	<input type="checkbox"/>
Was it used?	<input type="checkbox"/>	<input type="checkbox"/>
Was it used correctly?	<input type="checkbox"/>	<input type="checkbox"/>
Is the job boring?	<input type="checkbox"/>	<input type="checkbox"/>
Was the accident preventable?	<input type="checkbox"/>	<input type="checkbox"/>

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Recommendations for preventing this accident from recurring in the future:

## Appendix IV. Employee Driving Records

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<b>Employee Driving Records</b>				
<b>Designated drivers</b>	<b>License number</b>	<b>Years of driving experience</b>	<b>Driver's training (Date)</b>	<b>Number of traffic violations (or points)</b>
<b>Regular drivers</b> ( <i>operate vehicles regularly as part of job</i> )				
<b>Occasional drivers</b> ( <i>operate vehicles infrequently</i> )				
<b>Non-drivers</b> ( <i>do not operate vehicles as part of job but authorized to drive in an emergency</i> )				

## Appendix V. Indemnification

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*The following contractual language related to indemnification and the assumption of risk should be submitted to a review by the governmental jurisdiction's chief legal counsel prior to incorporation into any final agreement.*

### **Indemnification**

To the extent permitted by law, CONTRACTOR covenants to save, defend, keep harmless and indemnify the Township/Borough/City/Authority of and all of its elected or appointed officials, consultants, agents, authorized volunteers and employees (collectively the "Township/Borough/City/Authority") from and against any and all claims, loss, damage, injury, cost (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from or arising out of or in any way connected with the *(use or occupancy of the Township/Borough/City/Authority's premises)* or *(Contractor's performance of the work or Contractor's obligations under the contract)*.

# Appendix VI. Perils and Exposures Survey

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	<u>Expected Frequency</u>			<u>Expected Severity</u>		
	Low	Moderate	High	Low	Moderate	High
<b>Acts of Nature</b>						
Land movement						
Earthquake or volcano	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Landslide, avalanche	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Collapse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Erosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water damage						
Flood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer/pipes backup	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sprinkler system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blizzard, icestorm, hail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Windstorm						
Tornado	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hurricane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Falling objects	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lightning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Human Acts</b>						
Crime						
Employee dishonesty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Embezzlement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Robbery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Burglary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Larceny	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grand theft	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fraud	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Forgery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Counterfeiting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vandalism/malicious mischief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Riots/civil disorder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unintentional employee errors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Accidents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employee injuries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Illness						
Occupational disease	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drug/alcohol addiction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mental Illness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Death	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	<u>Expected Frequency</u>			<u>Expected Severity</u>		
	Low	Moderate	High	Low	Moderate	High
<b>Property Perils</b>						
Glass breakage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Breakdown of machinery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Collision						
Auto	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-auto	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Structural collapse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contamination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Corrosion, wear, abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Utility loss or failure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Failure of environmental controls						
Heat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Air conditioning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire/smoke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Equipment obsolescence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Computer failure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Indirect Exposures</b>						
Business interruption	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Extra expense	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Loss of rental income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Loss of earnings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Third-party Liabilities</b>						
Advertisers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Festival sponsorship	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Automobiles						
Owned	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Non-owned	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leased	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Property of others in public care/custody	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contracts						
Mutual-aid agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lease agreements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contracts of easement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grants	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sales or purchase orders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notes, mortgages, loans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Construction contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joint facilities usage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pollution liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	<u>Expected Frequency</u>			<u>Expected Severity</u>		
	Low	Moderate	High	Low	Moderate	High
Personal injury						
Trespass	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Libel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Slander	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mental injury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Defamation of character	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Invasion of privacy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Improper detention or eviction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Malicious prosecution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Products liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Negligence						
Elected officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Volunteers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contractors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Appendix VII. Sample Insurance Agent / Broker Selection Questionnaire Form

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## Insurance Agent / Broker Selection Questionnaire

The Borough / Township of \_\_\_\_\_, Pennsylvania

Month, Date, Year

Street Address  
City, State, Zip Code  
Phone Number  
Fax Number  
E-mail Address

**Section I. General Information**

A. Name of Firm: \_\_\_\_\_

B. Address: \_\_\_\_\_

C. City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

D. Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E. Name Principals, Years of Experience and Professional Qualifications / Designations (Attach resumes if available; add additional sheets if necessary)

1. \_\_\_\_\_  
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2. \_\_\_\_\_  
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3. \_\_\_\_\_  
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4. \_\_\_\_\_  
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\_\_\_\_\_

**Section II. Firm Composition**

- A. Number of Licensed Agents / Brokers: \_\_\_\_\_
- B. Premium Volume (excluding personal lines): \$ \_\_\_\_\_
- C. Number of PA Municipal Clients: \_\_\_\_\_
- D. PA Municipal Percentage of Total Premium Volume: \_\_\_\_\_ %
- E. Approximate Percentage of Insurance Business by Class
  - Liability – General & Auto \_\_\_\_\_ %
  - Liability – Speciality Forms  
Including Police Professional and Public Officials \_\_\_\_\_ %
  - Property / Inland Marine & Boiler \_\_\_\_\_ %
  - Crime \_\_\_\_\_ %
  - Workers’ Compensation \_\_\_\_\_ %

F. The Borough / Township will be assigning insurers to agencies. List your firm’s principal insurers by coverage line in *Priority Order*: most preferred market to least preferred. Please indicate each insurer’s percentage of your firm’s overall agency premium volume:

General and Automobile Liability: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Excess & Surplus: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

Public Officials: \_\_\_\_\_  
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\_\_\_\_\_

Police Professional: \_\_\_\_\_  
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Crime: \_\_\_\_\_  
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Workers' Compensation: \_\_\_\_\_  
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Property and Inland Marine: \_\_\_\_\_  
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\_\_\_\_\_

Boiler & Machinery: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section III. Addressing Borough / Township Needs & Interests**

A. Describe any special characteristics which may distinguish your firm from others: \_\_\_\_\_

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B. If selected to handle all or part of the Borough's / Township's Insurance Program, indicate the principals and support staff who will be assigned to the Borough's / Township's account: \_\_\_\_\_

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C. Please provide the names, addresses, phone numbers and contact persons of three current clients as references. Pennsylvania municipalities would be preferred: \_\_\_\_\_

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D. Please describe your agency's experience with the PA Political Tort Claims (Government Immunity) Act of 1980: \_\_\_\_\_

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E. Would your agency consider servicing the Borough's / Township's account on a fee basis? \_\_\_\_\_

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F. Who from your agency would be available to assist the Borough / Township in the event of a large property or liability loss? What claims experience do they have? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G. Describe your firm's marketing and risk management philosophy: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

H. Who from your agency would be available to assist the Borough / Township in loss prevention and control? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I. Would you be available for an interview or an oral presentation? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Submitted by: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*We appreciate your interest in the Borough / Township of \_\_\_\_\_, Pennsylvania*



# Appendix IX. Hold Harmless Form

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## Hold Harmless Clause

(Request a review by Municipal Solicitor prior to use)

Township of \_\_\_\_\_, County \_\_\_\_\_

Borough of \_\_\_\_\_, County \_\_\_\_\_

\_\_\_\_\_ (*Name of contractor*) agrees to indemnify and hold harmless the \_\_\_\_\_ (*Township/Borough*) of \_\_\_\_\_ (*Name*), its agents, employees or any other person against loss or expense including attorneys fees, by reason of the liability imposed by law upon the \_\_\_\_\_ (*Township/Borough*), except in cases of the \_\_\_\_\_ (*Township/Borough*)'s sole negligence, for damage because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to property arising out of or in consequence of this agreement, whether such injuries to persons or damage to property are due or claim to be due to any passive negligence of the \_\_\_\_\_ (*Township/Borough*), its employees or agents or any other person. It is further understood and agreed that the contractor shall (at the option of the \_\_\_\_\_ (*Township/Borough*)) defend the \_\_\_\_\_ (*Township/Borough*) of \_\_\_\_\_ (*Name*) with appropriate counsel and shall further bear all costs and expenses, including the expense of counsel, in the defense of any suit arising hereunder.

# **Risk Identification and Analysis: A Guide for Small Public Entities**

**By**

**Claire Lee Reiss, J.D., ARM**

*This publication is also available on PERI's Web site at [www.riskinstitute.org](http://www.riskinstitute.org)*

This material is provided free of charge, as a public service of the Public Entity Risk Institute, 11350 Random Hills Rd., Suite 210, Fairfax, VA 22030. Phone (703) 934-6046. Web: [www.riskinstitute.org](http://www.riskinstitute.org).

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# 1. Natural Hazards

## Some Risk Sources:

- Winter Storm
- Earthquake
- Landslide, Mudslide
- Sinkholes
- Erosion
- Windstorms
- Hurricanes
- Tornadoes
- Thunderstorms and Lightning
- Wildfire
- Flood
- Tsunami
- Volcanic eruptions
- Drought
- Heat

## Possible Losses or Adverse Results:

- Damage to public and private buildings and infrastructure
- Disruption of transportation
- Disruption of utilities (gas, electricity, water, sewers)
- Disruption of communications
- Disruption of food supply
- Disruption of entity revenues
- Disruption of entity services and disaster response activities
- Dislocation of families
- Disruption of emergency medical care
- Environmental contamination
- Opportunistic criminal activity
- Injury of citizens and employees
- Fires and explosions
- Release of hazardous materials into environment
- Loss of/inability to mobilize public workforce
- Loss of/inability to access public equipment
- Loss of computer based information

## Possible Strategies:

- Assess and determine vulnerability to natural hazard events
  - Adopt written emergency action plan, have it available on short notice, and practice it regularly
  - Assign disaster responsibilities to specific employees in advance
  - Enter into mutual aid agreements with other entities for potentially disrupted or overwhelmed services
  - Pre-arrange financing for disaster response activities
-

- Pre-arrange with vendors for emergency equipment, supplies, and additional workers
  - Adopt and publicize evacuation plans
  - Adopt plan for coordinating state and federal disaster relief
  - Include natural hazard vulnerability and mitigation techniques in initial development and post-disaster redevelopment decisions
  - Prepare contingency plans for shelter of displaced citizens
  - Adopt building code requiring disaster resistant construction
-

## 2. Contracts and Legal Relationships

### Some Risk Sources:

- Contracts for entity purchase or supply of goods and services
- Contracts to perform or receive construction services
- Award of franchises (example: cable television)
- Real estate leases (lessor or lessee)
- Real estate purchase or sale
- Contracts of easement
- Contracts for joint use of owned or non-owned facilities
- Contracts to jointly operate program with another entity
- Equipment and motor vehicle leases
- Notes, mortgages, and loans
- Mutual aid agreements
- Grant agreements
- Insurance contracts
- Employee credit/purchasing cards for which entity is responsible
- Contracts with vendors that allow entity employees access to “government rates” for personal purchases (example: cellular telephone service)

### Possible Losses or Adverse Results:

- Failure to comply with mandatory procurement practices
- Civil rights violations
- Contract executed beyond entity authority
- Third party default on contract with public entity
- Contractor/vendor/franchisee provides defective goods or services
- Public entity vicarious liability for contractor/vendor/franchisee actions
- Public entity default on contracts and agreements
- Public entity liability for providing defective goods or services
- Cost overruns on construction projects
- Damage to property leased by public entity
- Entity’s insurance contracts fail to cover its insured losses
- Contracts (including insurance) lost or destroyed and cannot be enforced
- Employee credit/purchasing card is lost or stolen by a third party and used for non-entity transactions
- Employee misuse of credit/purchasing card
- Entity liability for employee default on obligations incurred under “government rate” purchasing plan for personal services

### Possible Strategies:

- Conduct risk management/legal review of all contractual relationships
  - Conduct legal review of purchasing procedures
  - Include indemnity/hold harmless clauses and insurance requirements in entity contracts
  - Require ongoing, documented compliance with contractual insurance requirements
  - Include surety and performance bond requirements in contracts where appropriate
-

- ❑ Perform due diligence investigation of potential contract partners to determine solvency and ability to fulfill contractual obligations
  - ❑ Include in contracts language assigning responsibility for cost overruns
  - ❑ Implement loss prevention/quality assurance program to ensure high quality of entity provided goods and services
  - ❑ Make advance financing arrangements for entity liability arising from contractual relationships
  - ❑ Ensure that entity satisfies all contractual or lease requirements for insurance or performance/surety bonds
  - ❑ Conduct thorough review and analysis of entity's insurance coverage and other risk financing mechanisms at least annually
  - ❑ Keep all current and past insurance policies safe and accessible
  - ❑ Conduct regular actuarial review of self-insured programs
  - ❑ Establish and enforce security, appropriate use and reporting procedures and requirements for all purchasing/credit cards issued to employees
-

# 3. Financial Operations

## Some Risk Sources:

- Financial transactions
- Investment of entity funds
- Cash handling
- Dependence on state or federal revenue sources
- Entity bond rating
- Entity credit rating
- Community economic conditions
- Value of real estate or other community tax base
- Financial records
- Citizen records

## Possible Losses or Adverse Results:

- Reduced revenues  
(examples: devaluation of tax base, economic recession, loss of state, federal or grant funding for projects or activities, reduced income from investments)
- Inability to sell bonds  
(examples: loss of community support for bond issues, reduction in bond rating)
- Inability to borrow funds
- Loss of entity funds through theft/embezzlement/negligence
- Loss of entity funds through bad investments
- Loss or alteration of financial records
- Unauthorized transfer of entity funds via computer
- Violation of citizen right to privacy and confidentiality

## Possible Strategies:

- Implement and enforce system of internal financial controls
  - Implement and enforce system of controls for investment of entity funds
  - Provide adequate security at entity locations handling cash
  - Provide adequate security for hard copy and computer based financial records
  - Provide adequate security for any computer site used by the entity to conduct its financial transactions and transfer funds
  - Provide adequate security for citizen financial records
  - Back up of financial records
  - Promote economic health and desirability of the jurisdiction where the entity is located
  - Stay aware of state and federal initiatives that may impact revenue sources, and develop contingency plans to replace those sources
  - Ensure adequate performance on projects funded by federal, state, or other sources
-

## 4. Misconduct by Public Officials and Employees

### Some Risk Sources:

- Criminal acts by public officials or employees
- Sunshine/open meetings laws
- Conflicts of interest
- Gifts to public officials or employees

### Possible Losses or Adverse Results:

- Litigation; attorney's fees and verdicts or fines
- Reduced desirability of jurisdiction as a place to locate; reduced property values; reduced tax base; reduced economic health
- Citizen dissatisfaction and refusal to approve bond issues and other initiatives

### Possible Strategies:

- Train public officials and employees about their legal and ethical obligations
-

## 5. Acts or Omissions by Third Parties

### Some Risk Sources:

- Third party criminal acts or threats of criminal acts
- Third party negligent acts
- Third party events held on public property
- Third party environmental contamination
- Government preparation for and response to third party acts

### Possible Losses and Adverse Results:

- Damage to public or private property
- Contamination of public or private property
- Loss of public property or funds
- Injury or death of public employees
- Injury or death of citizens
- Disruption of local economy due to widespread property damage
- Entity costs of responding to impact of third party criminal acts on community
- Damage to/loss of entity's computer data and records
- Damage to entity's reputation and desirability of jurisdiction
- Repeated disruption of entity operations in response to threats of criminal acts
- Entity liability for failure to adequately prepare for, or respond to, third party acts
- Liability for injury to citizen resulting from third party event on public property  
(examples: food poisoning, alcohol related accidents, inadequate security, fireworks accidents, amusements and rides, hazardous condition of premises)

### Possible Strategies:

- Adopt and practice contingency plans to prevent and control impact of third party actions on the community, and to provide emergency support during and after the event  
(examples: terrorist attack, bombing, takeover of government or private installations, jail riot, school shooting, environmental contamination event)
  - Assess and, if necessary, increase security at public entity locations for the entity's personnel, systems, and property
  - Assess security at major private facilities locations where a terrorist act could endanger the broader community and, if necessary, help the facility increase security
  - Work with law enforcement officials to establish procedure for responding to threats of criminal acts
  - Provide adequate security for government computer installation and data
  - Require third parties to provide proof of adequate insurance coverage for liability arising from their events held on public property, including liquor liability, if applicable
  - Train public employees how to address third party criminal behavior they may confront in their jobs
-

## 6. State or Federal Laws or Regulations

### Some Risk Sources:

- Changes in laws or regulations or changes in their enforcement  
(examples: civil rights, election, privacy rights, employment -see #12 Workforce, land use planning authority, law enforcement practices, local government accounting and investment practices, public health, social services/welfare, environmental, disaster recovery resources, human rights, taxing authority, waste disposal)

### Possible Losses or Adverse Events:

- Reduction of revenues
- Increased costs of operation
- Increased documentation/paperwork
- Reduced time for employees to deliver services
- Change in or elimination of activities or services
- Creation of unexpected liabilities for prior legal acts
- Fines and penalties
- Increased civil judgments

### Possible Strategies:

- Monitor legislative and regulatory initiatives
  - Present entity's position to legislators and regulators when appropriate
  - Prepare in advance for compliance
-

## 7. Economic Conditions

### Some Risk Sources:

- Negative changes in general or local economic conditions
- Inflation
- Increase in interest rate

### Possible Losses or Adverse Results:

- Erosion of value of government assets
- Unexpected increase in cost of resources and supplies entity needs to provide services necessitating reduction of government services provided
- Increased difficulty or cost of borrowing funds and selling bond issues
- Relocation of citizens and business to other jurisdictions with fewer economic problems

### Possible Strategies:

- Identify and address emerging economic problems in the community
  - Advance contracts for resources and supplies needed by government to provide services
-

# 8. Government Activities and Services

## Some Types of Activities and Services:

- Governing functions**  
(examples: adoption of ordinances and regulations, taxation, licensing and permits, land use and zoning, registration and titles, building codes, fire codes)
  - Management and administrative functions**  
(examples: personnel, purchasing, legal, finance, risk management, fleet management, grounds and building maintenance, record keeping)
  - Communications with the public**  
(examples: advertising events, materials promoting the jurisdiction, web site content, warnings, notice of public meetings, statements to the media, e-mail, letters, newsletters and articles)
  - Operation of equipment and machinery**  
(examples: aircraft, motor vehicles, construction equipment, watercraft, mobile equipment)
  - Transportation**  
(examples: airports, train stations, bus stations, public transit systems)
  - Recreational facilities and activities**  
(examples: amusement parks, athletic facilities, auditoriums, beaches, campgrounds, golf courses, ice skating rinks, marinas and docks, parks, playgrounds, recreation centers, shooting ranges, summer camps, skateboard/rollerblade facilities, sporting events, swimming pools and water parks, winter sport/skiing sites, zoos)
  - Educational facilities**  
(examples: schools, libraries, museums)
  - Public safety**  
(examples: law enforcement, parking enforcement, animal control, fire and rescue, disaster response, emergency medical services, jails and correctional facilities, vehicle impound facilities)
  - Public infrastructure**  
(examples: highways, streets, sidewalks, bridges, culverts, tunnels, sewage collection and treatment, stormwater collection, dams)
  - Refuse and recycling**  
(examples: incinerators, recycling plans, landfills, garbage dumps, refuse and recycling collection)
  - Public health**  
(examples: cemeteries, public hospitals and clinics, school nurses, health department, vaccination programs, mental health programs, substance abuse programs, residential programs)
  - Social services**  
(examples: day care for children and elderly, public housing, homeless shelters, welfare, foster care, child protective services, senior services)
  - Public buildings and premises**  
(examples: existing buildings, new construction projects, parking facilities, vacant buildings, unimproved land)
  - Public utilities**  
(examples: water, electricity, gas, nuclear)
  - Professional services and activities**  
(examples: physicians, psychologists, accountants, lawyers, architects, engineers, information technology, nursing, dental, physical and occupational therapists, teachers)
  - Courts and juvenile justice system**
  - Hazardous materials use**
-

## Some Possible Adverse Results:

- Liability for bodily injury or property damage due to unsafe condition of publicly owned or occupied buildings**  
(examples: unsafe walking surface conditions, inadequate lighting and security, overcrowding and lack of crowd control, lack of fire and building code compliance, contamination with hazardous materials (lead paint, asbestos, PCB's), infestation with vermin, plumbing and electrical system malfunction)
  - Liability for bodily injury or property damage due to unsafe condition of public infrastructure and grounds**  
(examples: unsafe walking and driving conditions (surface damage, missing manhole covers and grates), unsafe road design (banking, visibility, railings, emergency shoulders, drainage), inadequate lighting, inadequate signage, inadequate hazard warnings, malfunctioning traffic signals, failure to clear after storm, falling trees and other objects, unsafe design or condition of playground or other outdoor recreational sites, drowning hazards, overcrowding and lack of crowd control, inadequate spectator protection, inadequate supervision (such as lifeguards for pools and beaches), inadequate severe weather contingency plans for outside recreational areas (such as beaches, pools, golf courses, camp grounds))
  - Liability for bodily injury or property damage at construction sites**  
(examples: adjacent property, underground utilities and resulting disruption of service, passersby, unsafe conditions of premises affecting building occupants, contractor and subcontractor employees, suppliers and public employees)
  - Liability for bodily injury or property damage arising from law enforcement activities**  
(examples: excessive force (such as firearm, K-9, pepper spray/tear gas, use of handcuffs), accidents during operation of police vehicle (including hot pursuit, response to officer in distress), assault and battery; inmate injury.)
  - Liability for bodily injury or property damage arising from fire and rescue and emergency medical services**  
(examples: failure to dispatch timely, failure to deliver services, accidents during operation of fire engine/ambulance, lack of consent to treat or transport, failure to follow medical protocols, failure of equipment, injury of citizens during rescue/treatment, medication errors)
  - Personal injury liability**  
(examples: false arrest, detention or imprisonment, malicious prosecution, wrongful eviction, defamation (slander or libel exposing a person to ridicule, scorn or contempt), and invasion of privacy)
  - Liability for discrimination/violation of civil rights/abuse of discretion**  
(examples: discrimination based upon age, disability, gender, national origin, personal views, pregnancy, race, religion, sexual orientation or other categories protected under state or federal law. Includes discrimination in access to public facilities and programs, public employment, law enforcement activities, obtaining licenses and permits, planning and zoning decisions. Also includes free speech and privacy issues in various settings.)
  - Liability for bodily injury or property damage due to operation of aircraft, watercraft, motor vehicles, public and school transit systems and mobile equipment**  
(examples: liability for bodily injury and property damage arising out of the use of owned, non-owned and hired equipment, unlicensed operator, inadequate operator training, inadequate background check/reference check for operator, intoxication of operator)
  - Food service**  
(examples: food poisoning, foreign object in food, unanticipated closure of facility due to unsanitary conditions or infestation)
  - Liquor service**  
(examples: host liquor liability for actions of guests/patrons served, license to serve, private events on public property, server inadequately trained, service to minors)
  - Failure or disruption of public services delivery**  
(examples: utilities, sewer back-ups, water, refuse collection, storm clean-up, social services, residential and clinical health services, hospitals, welfare benefits, public housing and homeless shelters)
-

- Environmental contamination**  
(examples: under ground and above ground storage tanks, vehicle accidents, pipelines, waste disposal, incinerators, landfills, sewage overflow, water treatment plant malfunction, release of contaminants in building components and systems (Asbestos, PCB's, Halon, Chlorine)
- Schools**  
(examples: student bodily injury, student privacy and confidentiality, student discipline, student speech, student and non-student on-campus violence, school social events, lack of parental consent and waiver for off campus activities, student Internet access, physical or sexual abuse of students by staff or other students )
- Damage to/loss of property of others in custody of government**  
(examples: arts works and museum pieces on loan, impounded motor vehicles, personal effects at jail, leased equipment and motor vehicles)
- Professional liability**  
(examples: failure to comply with standard of care in the profession, lack of informed consent for medical services)

## **Possible Advance Preparation:**

- Hire responsible, well-qualified workforce and keep turnover low**  
(include: appropriate investigation of incoming employees who will work with children, the elderly, or the mentally disabled; verification of job history, credentials and licensure; reference checks; skills testing; and other investigation as indicated by the requirements of the position)
  - Adopt and require employees to follow appropriate standard operating procedures**  
(review standard operating procedures periodically to ensure that they remain effective and relevant, and revise if not)
  - Require ongoing, job specific training for all employees**  
(include: loss prevention and quality of service issues, thorough and accurate recordkeeping procedures, safe operation of motor vehicles, safe operation of heavy equipment and trucks, job specific standard operating procedures, good relations with citizens, what to do when an accident or injury occurs )
  - Conduct regular and thorough safety inspections of public premises and correct identified problems**  
(include: periodic, documented inspections by risk management, safety personnel, or other employee external to the operation; frequent, documented inspections by supervisory personnel within the operation; education of all employees in the operation to assume responsibility for safety and address safety issues as they arise. Include inspection of grounds and outdoor recreation facilities and playgrounds. Encourage employees to report problems they observe with streets, sidewalks and other infrastructure; establish system for residents of publicly owned housing to report problems)
  - Ensure adequate security for public premises**  
(include: security to prevent criminal acts and ensure adequate crowd control at publicly sponsored events and privately sponsored events on public property, as needed for various government operations, after hours security for public buildings)
  - Limit and carefully control use and storage of hazardous materials in public operations**  
(include: compliance with federal and state OSHA and EPA regulations, substitute less hazardous materials when possible, regularly check storage and use areas for potential leaks)
  - Require sponsors of non-public events held on public property to provide evidence of insurance or other financial responsibility for all potential losses arising from the event**  
(include: general liability and coverage for hazardous activities that may require specialized coverage, such as fireworks.)
  - Properly inspect and maintain all equipment and vehicles used in conjunction with public operations**  
(include: motor vehicles, buses, mobile and non-mobile equipment, medical equipment, playground equipment, athletic equipment, power tools, ladders, ventilation equipment)
-

- ❑ Train all employees about requirements of laws relating to discrimination and civil rights  
(include: specialized training of employees who hire other public employee, training of all employees to avoid discrimination and civil rights violations against fellow employees and citizens.)
  - ❑ Develop contingency plans to ensure continuation of public services and operations  
(include: post disaster, disruption of lifeline services, disruption of supplies to public agencies, lack of employee availability, inadequate equipment or workforce)
  - ❑ For all construction projects, confirm potential contractors' ability to conduct the project in a safe and responsible manner, in compliance with state and federal laws and regulations.  
(examples: OSHA compliance, "Before You Dig" precautions relating to underground utilities, safeguarding of adjacent property and passersby, dealing with asbestos and lead during renovation of existing older buildings)
  - ❑ Form a public risk management committee with representatives from all public operations
  - ❑ Develop a system for documentation, reporting, and review of all accidents, injuries, and potential liability causing events, and for implementing any required corrective action
  - ❑ Ensure that the governing board has appropriate legal advice to support its exercise of governmental functions
-

## 9. Dependence on Outside Resources

### Some Risk Sources:

- Dependence on utilities  
(examples: electricity, natural gas, oil, water supply)
- Dependence on communications networks  
(examples: telephone service, cellular/digital telephone service, 911 service and dispatch system, two way radios)
- Dependence on suppliers of commodities  
(examples: food, gasoline, medical supplies)
- Dependence on contractors for emergency services  
(examples: snow plows and tree trimming for post-storm street clearing, environmental cleanup services for accidental spills)
- Dependence on mutual aid agreements

### Possible Losses or Adverse Results:

- Impact of resource unavailability on ability to deliver public services
- Impact of unexpected price increase on ability to deliver services
- Impact of sudden increase in demand on ability to deliver services
- Citizen bodily injury or property damage

### Possible Strategies:

- Contingency plans for delivering services despite resource disruption
  - Identify critical operations and prioritize them to receive supplies
  - Make resource back up arrangements in advance  
(example: provide generators and alternative water supply for hospitals and jails)
  - Long term contract for purchase of energy utilities at fixed price
  - Contract with multiple resource providers suppliers to avoid relying on a single source
  - Mutual aid agreements with multiple neighboring jurisdictions
  - Arrange with vendors and suppliers in advance for equipment and supplies required to respond to emergency conditions
  - Adequate security at utilities and water treatment plants
  - Confirm that potential resource providers have adequate contingency plans to minimize disruption of their operations
-

# 10. Property Loss

## Some Risk Sources:

- Public buildings
- Publicly owned utilities  
(examples: natural gas, electric, water treatment, sewers)
- Publicly owned incinerators and landfills
- Construction projects
- Public infrastructure  
(examples: highways, streets, sidewalks, bridges, culverts, tunnels, sewage collection and treatment, stormwater collection, signs, dams)
- Recreational sites and equipment  
(examples: amusement parks, athletic facilities, beaches, campgrounds, exercise equipment, golf courses, ice skating rinks, marinas/docks, parks, playground equipment, shooting ranges, skateboard/rollerblade facilities, swimming pools, winter sports sites, zoos)
- Valuable objects  
(examples: art works, antiques, zoo animals, valuable books and papers)
- Motor vehicle fleet
- Watercraft
- Aircraft
- Mobile equipment  
(examples: forklifts, road maintenance, mobile command centers, refuse and recycling collection, fire and rescue trucks and equipment, ambulances)
- Police weapons
- Buses  
(examples: school, public transit, transportation of citizen-client groups)
- Animals  
(examples: police dogs, zoo animals, police horses)
- Property leased or borrowed from others  
(examples: art works, zoo animals, leased motor vehicles or other equipment)
- Computer technology  
(examples: personal computers, main frame computers, laptop computers, palm pilots, data and media, software, website)
- Business records
- Communications technology  
(examples: antenna, satellite dishes, cellular phones, portable radios, phone systems)
- Vacant publicly owned buildings
- Vehicle impound facilities
- Trees

## Possible Losses or Adverse Results:

- Public building or facility damage or total loss; repair or replacement cost  
(examples: fire, boiler or machinery failure, explosion, failure of water pipes or sprinkler system, criminal activity, natural hazard or extreme weather damage, failure of electrical system, third party negligence, obsolescence)
  - Inability to use public building or facility to deliver government services  
(examples: physical loss or damage, utility or service disruption, inaccessibility, contamination with hazardous materials -chemicals, asbestos, lead, biohazards etc.)
  - Extra expense to continue providing government services without public building  
(examples: cost of renting temporary substitute premises and equipment; cost of expediting repairs)
  - Loss of or damage to other public equipment and furnishings  
(examples: repair or replacement costs, extra expense pending repair or replacement)
-

- Revenue lost on damaged/destroyed public property leased to others
- Loss of/damage to valuable objects  
(examples: replacement cost, repair and restoration cost, expedited restoration of deteriorating objects - wet paper or cloth, for example)
- Loss of/damage to motor vehicle, bus, watercraft, aircraft, mobile equipment  
(examples: individual vehicle accident or damage - cost of repair or replacement, damage or destruction of major portion of fleet or unique equipment - cost of repair or replacement and cost of temporary replacement if needed to continue delivery of services)
- Property leased or borrowed from others  
(examples: cost of repair or replacement, for leased items, lessor's loss of rental income while under repair.)
- Computer technology  
(Examples: cost of repair or replacement of hardware due to damage, loss or obsolescence; sabotage or theft of data by hacker or employee; cost to restore software and data; extra expense to replace resources pending replacement or repair)
- Business records  
(examples: cost of restoration of records, lost or delayed revenue)
- Publicly owned incinerators and landfills  
(example: environmental contamination from refuse)
- Public infrastructure: loss of use or reduced capacity  
(examples: damage due to natural disaster, failure to maintain leading to more rapid deterioration)

## **Possible Strategies:**

- Fire alarm and sprinkler systems; fire extinguishers; fire resistant construction when feasible
  - Regular and documented fire drills
  - Regular inspection of premises for fire hazards
  - Maintain thorough and accurate inventory of building contents with values
  - Regularly assess condition of water supply and waste pipes and address maintenance issues
  - Assess security needs of each building, both during the work day and after hours, and implement appropriate building and perimeter security precautions
  - Regular inspection of boilers and machinery
  - Assess and control for hazards posed by operations on adjacent property
  - Assess susceptibility of location to natural hazard events before building  
(examples: wildfire, flood, earthquake, landslide, sinkholes, hurricane, tsunami, windstorm)
  - Construct or retrofit buildings to withstand reasonably expected natural hazards events
  - Conduct due diligence investigation of all property for environmental contamination before acquisition
  - Train all employees about fire safety issues presented in their operations
  - Conduct routine maintenance of public infrastructure
  - Business records: hard copy and computer  
(example: regular, off-site back up of software and data; advance planning for restoration)
  - Computer technology  
(examples: regular inventory and labeling of equipment, sign out policies for portable equipment, surge protection, internal access to system areas limited to need, security against unauthorized internal and external penetration, off-site back up of all software and data, limit employee access to Internet to employees with a business need, regularly update virus protection, train employees about virus hazards, establish and enforce written procedures regarding use of computer and Internet technology.)
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- ❑ Identify in advance all hazardous materials used or stored on premises and take appropriate action to avoid contamination of public facilities and land with these materials  
(examples: strictly enforced procedures for disposal of hazardous substances; regular inspection of storage tanks and pipelines, ensure compliance of landfills and incinerators with environmental regulations)
  - ❑ Confirm licensure and/or appropriate training of all employees and contractors operating motor vehicles, aircraft, watercraft, fire and rescue equipment or other hazardous machinery on behalf of the public entity
  - ❑ Consider lightning protection systems where needed to protect property, such as rooftop mounted antennas and satellite dishes
  - ❑ For construction projects, require appropriate financial security that contractor will complete the project on time, within budget and in compliance with project specifications, building and fire codes, and other state and federal legislation and regulations
  - ❑ Property of others held or used by public entity: reach agreement in advance as to risk of loss during use, and make appropriate arrangements to finance any loss (examples: works of art on loan, public safety equipment on loan)
  - ❑ Plan for financing replacement or repair of damaged or destroyed property, including property under construction; replacement of obsolete property and equipment; and extra expense associated with continuing operations following loss of, or damage to, business property
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# 11. Use of Technology

## Some Risk Sources:

- Mainframe computers
- Network servers
- Desktop personal computers
- Laptop computers
- Internet
- E-mail
- Web site
- Cellular telephones
- Two way radio systems

## Possible Losses or Adverse Results:

- Physical loss of equipment  
(examples: fire, theft, power surges, sabotage, natural disasters, physical impact, environment, viruses, obsolescence)
  - Loss of data  
(examples: theft, sabotage, malfunction, user error, viruses, crash due to power surges, hacker attack)
  - Breach of citizen privacy and confidentiality through unauthorized access to data  
(example: outside party gains access to citizen credit card numbers, social security number, or other personal data.)
  - Breach of open meetings laws  
(example: discussion of issues subject to open meetings laws in non-public forum such as e-mail)
  - Employee e-mail use or contents create legal exposure  
(examples: sexual harassment, discrimination, defamation, offensive content, transmission of viruses, discovery in legal proceedings, lost productivity due to employee use for non-work related purposes)
  - Web site contents or operations create legal exposure  
(examples: copyright infringement, trademark infringement, defamation, offensive material, discriminatory material, violation of business model patents, virus transmission, links to other sites without written permission, liability based on contents of other sites to which entity web site links, inaccurate or misleading content, prolonged lack of site availability for transactions or informational purposes, errors in processing online transactions, release or theft of confidential citizen information)
  - Hacker attacks  
(examples: disabling operation of site, insertion of objectionable material, deletion of material, use of system by hackers to launch attacks against other sites)
  - Employee Internet use  
(examples: lost productivity due to employee use for non-work related purposes, employee visits to objectionable sites, employee storage of objectionable material on entity computers, potential breach of employees' constitutional right to free speech by prohibiting non-work related visits to some web sites but not others, use of entity cell phone for non-entity business, use of Internet to order goods for employee's personal use)
  - Software loss or damage  
(examples: obsolescence, physical destruction, destruction by computer malfunction, destruction by virus)
  - Software inadequacy  
(examples: inadequate for purpose intended, incompatible with other systems)
  - Software intellectual property issues  
(examples: violation of commercial software licensure terms, ownership of source codes for software designed for the entity, ownership of entity data in the computer systems of vendors)
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- Inability to deliver services due to technology failure  
(example: inability to provide 911 police/fire and rescue services due to failure of supporting technology, inability to process citizen payments of tax bills, fines etc.)
- Motor vehicle accidents due to cell phone or computer use while driving on entity business
- Fraudulent transactions on e-government sites

## **Possible Strategies:**

- Regularly back up and store data and software off-site in secure location
  - Implement security measures for data and systems  
(examples: internal security levels based on need to access, internal and external protection against unauthorized access, monitoring of access, firewalls, restricted physical and remote access, monitor system traffic for attempted breaches, identify and install manufacturer patches to correct software vulnerabilities, encryption of sensitive citizen information)
  - Protect computers against risks of physical loss or damage  
(examples: surge protection, locking down equipment, especially laptops, strict sign out requirements for laptops, require immediate reporting of loss or damage, thorough annual inventory of equipment, appropriate workstations for equipment)
  - Identify system vulnerabilities to outside access  
(examples: use ethical hacker, monitor websites of software providers)
  - Require appropriate identifying information for all e-government transactions
  - Adopt contingency plans for continuing to operate and provide services without technology
  - Implement, train employees and officials about, and enforce policies and procedures governing use of the Internet and e-mail  
(examples: limit use to business use; prohibit e-mail content that is defamatory, obscene, discriminatory, offensive or harassing; train and educate employees about policies and procedures; train governing board members about e-mail issues, including Sunshine Laws; train employees about viruses and e-mail attachments; train employees and officials about discoverability of e-mail contents during litigation or under Freedom of Information Acts.)
  - Avoid inappropriate postings or changes to web site  
(examples: limit internal authority to make changes and postings to entity's web site, prohibit posting of materials on web site by any employees other than those authorized, appropriate internal and external firewalls and security, train employees who have the authority to change the web site about relevant legal exposures)
  - Require employees to immediately report theft of any entity owned technology equipment in their possession  
(examples: cell phones, lap tops)
  - Establish and enforce safety rules controlling use of cell phones or computers while driving on entity business
  - Centralize control of all software installation
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# 12. Workforce

## Some Risk Sources

- Employment practices  
(examples: hiring, discipline, incentive programs, termination, turnover, retirement, right to privacy and confidentiality, benefits)
- Volunteer workforce
- Independent contractors
- Worker substance use
- Employees or volunteers under age 18
- Employee recreational activities
- Worker injury or illness
- Workplace policies, procedures, and rules
- Employment of workers who are not American citizens
- Providing references for former employees
- Inadvertent creation of non “at will” employment relationship with employees
- Employee pre-existing health conditions
- Employment related laws and regulations

## Possible Losses or Adverse Results

- Fines or penalties for noncompliance with federal or state occupational safety and health requirements  
(examples: bloodborne pathogens, lockout/tagout, electrical work, lateral support for excavation, tree trimming, walking surfaces and ladders, hazardous materials, recordkeeping and posting, machinery guarding, respiratory protection, job safety analysis, confined space entry, manual material handling, ingress and egress, first aid)
  - Costs of employee work related injury or illness  
(examples: workers’ compensation benefits, medical expenses, liability for employee injury not covered by workers’ compensation, lost productivity during recovery, cost of replacing skilled employee, employer responsibility for pre-existing health conditions)
  - Liability for judgment and defense costs for employment practices litigation  
(examples: discrimination in any facet of employment based on race, age, pregnancy, religion, national origin, marital status, number of children, disability and other factors under state and federal law; sexual harassment; failure to accommodate or other violations of Americans with Disabilities Act; Family Medical Leave Act; breach of employee confidentiality or privacy)
  - Litigation alleging defamation of employee  
(examples: during disciplinary activities, post employment references)
  - Liability to injured third parties for negligent hiring, training, supervision or retention of employees  
(examples: inadequately qualified, trained or supervised employee injures third party during hazardous operations, employee intoxicated on the job injures third party)
  - Losses from employee intentional acts against the employer or other employees  
(examples: theft, arson, pilferage, violent acts, harassment)
  - Citizen dissatisfaction due to inadequate public services.  
(examples: inadequate hiring procedures, inadequate on the job training, inadequate pool of potential employees, excessive turnover or early retirement due to lack of competitive pay and benefits or unpleasant working environment)
  - Penalties or liability for failure to properly administer employee benefits  
(examples: failure to enroll or incorrect enrollment for benefits, failure to maintain benefits, failure to provide notice about post-termination benefits continuation, negligent selection of vendors for employee benefit plans, breach of fiduciary duty related to retirement plans)
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- ❑ Penalties for employing non-citizens in violation of federal immigration laws
- ❑ Non-employee work-related injury or illness  
(examples: independent contractor without workers' compensation insurance, volunteers)
- ❑ Costs of worker injury during after-hours recreational/fitness activity  
(example: employee sponsored teams during non-working hours, law enforcement personnel engaging in off duty exercise to maintain required physical fitness level)
- ❑ Liability to third parties for actions of independent contractor  
(example: contractor operations damage property of or cause injury to third party)
- ❑ Liability to third parties for actions of volunteer  
(examples: volunteer damages property of or causes injury to third party, volunteer abuse of children, elderly or disabled in volunteer's care)

## Possible Strategies:

- ❑ Prepare written policies and procedures governing all aspects of the employment relationship from hiring through post employment, and have these policies and procedures reviewed and approved by legal counsel prior to implementation, and train all supervisors and managers.  
(examples: job advertising, job application, job interview, hiring, probation, family medical leave, reasonable accommodation of employees with disabilities, supervision, discipline, references for prior employees, off-duty recreational and fitness activities, substance abuse testing for employees in sensitive or hazardous positions, benefits, termination, workers' compensation procedures and prompt reporting of work related injuries, written records of employment matters, confidentiality of employee information, due process in employee discipline/termination proceedings)
  - ❑ Prepare and periodically update written job descriptions for all positions, including identification of essential functions of the job, and review for compliance with the Americans With Disabilities Act.  
(examples: identify essential functions of the job - what needs to be accomplished, not precisely how it must be accomplished)
  - ❑ Obtain professional analysis of any physical fitness standards required for public safety personnel or other employees and verify that they are job related and a matter of business necessity.
  - ❑ Implement written policies addressing areas of employee activity that pose potential problems; obtain review and approval of legal counsel before implementation; and train employees.  
(examples: sexual harassment, Internet and e-mail use, requirements for driving entity owned vehicles, use of cellular phones while driving, use of passenger restraint systems while driving, use of entity owned vehicles on non-entity business, transporting non-employees in entity owned vehicles, law enforcement officer off duty employment, intoxication/drug use on the job, commercial drivers' license driver requirements, violent or intimidating employee conduct in the workplace)
  - ❑ Adopt a safety program to reduce injuries and property damage arising out of entity operations  
(examples: enlist visible upper management support of the safety program, entity-wide safety committee, individual department safety committees, reporting and review of all accidents, injuries and near misses, analysis of entity loss experience to identify problem areas for intervention, establish safety rules and impose discipline for failure to comply, recognize operations with good safety records, identify and comply with applicable OSHA standards, identify and comply with other applicable standards, such as National Fire Protection Association, conduct regular inspections of entity premises, equipment and tools for safety hazards, train all employees about safety issues applicable in general and to their specific operation, ensure employees have adequate training and experience before undertaking hazardous operations, periodically retrain employees to update information and ensure)
  - ❑ Require independent contractors to have appropriate safety program and commit to follow applicable OSHA standards.
-

- Require independent contractors to comply with federal and state laws and regulations relating to employment.
  - Require independent contractors to indemnify and hold harmless the entity for liability arising out of its operations under the contract.
  - Prepare written volunteer job descriptions and orient volunteers to safety issues and required standards of conduct before they begin working.
  - Reduce workforce turnover  
(example: improve hiring practices, improve benefits and pay, improve work environment)
  - Administer employee benefits program through well-qualified internal or external personnel.
  - Require Americans With Disabilities Act compliant health examination of employee after a contingent job offer has been made, but before the employee has begun work.
  - Document all employee training
  - Obtain prior legal review of any employee handbook.
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