
SENATE BILL No. 256

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-5; IC 21-2-5.6-2.

Synopsis: School corporation risk management programs. Allows school corporations to enter into interlocal agreements to establish a cooperative risk management program to provide for coverage of certain risks of the school corporations.

Effective: Upon passage.

Kenley

January 8, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

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SENATE BILL No. 256



A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-5-2-2, AS AMENDED BY P.L.286-2001,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 2. In carrying out the school purposes of each
4 school corporation, its governing body acting on its behalf shall have
5 the following specific powers:

6 (1) In the name of the school corporation, to sue and be sued and
7 to enter into contracts in matters permitted by applicable law.

8 (2) To take charge of, manage, and conduct the educational affairs
9 of the school corporation and to establish, locate, and provide the
10 necessary schools, school libraries, other libraries where
11 permitted by law, other buildings, facilities, property, and
12 equipment therefor.

13 (2.5) To appropriate from the general fund an amount, not to
14 exceed the greater of three thousand dollars (\$3,000) per budget
15 year or one dollar (\$1) per pupil, not to exceed twelve thousand
16 five hundred dollars (\$12,500), based upon the school
17 corporation's previous year's average daily membership (as



1 defined in IC 21-3-1.6-1.1) for the purpose of promoting the best
 2 interests of the school corporation by:

3 (A) the purchase of meals, decorations, memorabilia, or
 4 awards;

5 (B) provision for expenses incurred in interviewing job
 6 applicants; or

7 (C) developing relations with other governmental units.

8 (3) To acquire, construct, erect, maintain, hold, and to contract for
 9 such construction, erection, or maintenance of such real estate,
 10 real estate improvements, or any interest in either, as the
 11 governing body deems necessary for school purposes, including
 12 but not limited to buildings, parts of buildings, additions to
 13 buildings, rooms, gymnasiums, auditoriums, playgrounds, playing
 14 and athletic fields, facilities for physical training, buildings for
 15 administrative, office, warehouse, repair activities, or housing of
 16 school owned buses, landscaping, walks, drives, parking areas,
 17 roadways, easements and facilities for power, sewer, water,
 18 roadway, access, storm and surface water, drinking water, gas,
 19 electricity, other utilities and similar purposes, by purchase, either
 20 outright for cash (or under conditional sales or purchases money
 21 contracts providing for a retention of a security interest by seller
 22 until payment is made or by notes where such contract, security
 23 retention, or note is permitted by applicable law), by exchange, by
 24 gift, by devise, by eminent domain, by lease with or without
 25 option to purchase, or by lease under IC 21-5-10, IC 21-5-11, or
 26 IC 21-5-12. To repair, remodel, remove, or demolish any such real
 27 estate, real estate improvements, or interest in either, as the
 28 governing body deems necessary for school purposes, and to
 29 contract therefor. To provide for energy conservation measures
 30 through utility energy efficiency programs or under a guaranteed
 31 energy savings contract as described in IC 36-1-12.5.

32 (4) To acquire such personal property or any interest therein as
 33 the governing body deems necessary for school purposes,
 34 including but not limited to buses, motor vehicles, equipment,
 35 apparatus, appliances, books, furniture, and supplies, either by
 36 outright purchase for cash, or under conditional sales or purchase
 37 money contracts providing for a security interest by the seller
 38 until payment is made or by notes where such contract, security,
 39 retention, or note is permitted by applicable law, by gift, by
 40 devise, by loan, or by lease with or without option to purchase and
 41 to repair, remodel, remove, relocate, and demolish such personal
 42 property. All purchases and contracts delineated under the powers

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1 given under subdivision (3) and this subdivision shall be subject
 2 solely to applicable law relating to purchases and contracting by
 3 municipal corporations in general and to the supervisory control
 4 of agencies of the state as provided in section 3 of this chapter.
 5 (5) To sell or exchange any of such real or personal property or
 6 interest therein, which in the opinion of the governing body is not
 7 necessary for school purposes, in accordance with IC 20-5-5, to
 8 demolish or otherwise dispose of such property if, in the opinion
 9 of the governing body, it is not necessary for school purposes and
 10 is worthless, and to pay the expenses for such demolition or
 11 disposition.
 12 (6) To lease any school property for a rental which the governing
 13 body deems reasonable or to permit the free use of school
 14 property for:
 15 (A) civic or public purposes; or
 16 (B) the operation of a school age child care program for
 17 children aged five (5) through fourteen (14) years that operates
 18 before or after the school day, or both, and during periods
 19 when school is not in session;
 20 if the property is not needed for school purposes. Under this
 21 subdivision, the governing body may enter into a long term lease
 22 with a nonprofit corporation, community service organization, or
 23 other governmental entity, if the corporation, organization, or
 24 other governmental entity will use the property to be leased for
 25 civic or public purposes or for a school age child care program.
 26 However, if the property subject to a long term lease is being paid
 27 for from money in the school corporation's debt service fund, then
 28 all proceeds from the long term lease shall be deposited in that
 29 school corporation's debt service fund so long as the property has
 30 not been paid for. The governing body may, at its option, use the
 31 procedure specified in IC 36-1-11-10 in leasing property under
 32 this subdivision.
 33 (7) To employ, contract for, and discharge superintendents,
 34 supervisors, principals, teachers, librarians, athletic coaches
 35 (whether or not they are otherwise employed by the school
 36 corporation and whether or not they are licensed under
 37 IC 20-6.1-3), business managers, superintendents of buildings and
 38 grounds, janitors, engineers, architects, physicians, dentists,
 39 nurses, accountants, teacher aides performing noninstructional
 40 duties, educational and other professional consultants, data
 41 processing and computer service for school purposes, including
 42 but not limited to the making of schedules, the keeping and

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1 analyzing of grades and other student data, the keeping and
 2 preparing of warrants, payroll, and similar data where approved
 3 by the state board of accounts as provided below, and such other
 4 personnel or services, all as the governing body considers
 5 necessary for school purposes. To fix and pay the salaries and
 6 compensation of such persons and such services. To classify such
 7 persons or services and to adopt schedules of salaries or
 8 compensation. To determine the number of such persons or the
 9 amount of services thus employed or contracted for. To determine
 10 the nature and extent of their duties. The compensation, terms of
 11 employment, and discharge of teachers shall, however, be subject
 12 to and governed by the laws relating to employment, contracting,
 13 compensation, and discharge of teachers. The compensation,
 14 terms of employment, and discharge of bus drivers shall be
 15 subject to and shall be governed by any laws relating to
 16 employment, contracting, compensation, and discharge of bus
 17 drivers. The forms and procedures relating to the use of computer
 18 and data processing equipment in handling the financial affairs of
 19 such school corporation shall be submitted to the state board of
 20 accounts for approval to the end that such services shall be used
 21 by the school corporation when the governing body determines
 22 that it is in the best interests of the school corporation while at the
 23 same time providing reasonable accountability for the funds
 24 expended.

25 (8) Notwithstanding the appropriation limitation in subdivision
 26 (2.5), when the governing body by resolution deems a trip by an
 27 employee of the school corporation or by a member of the
 28 governing body to be in the interest of the school corporation,
 29 including but not limited to attending meetings, conferences, or
 30 examining equipment, buildings, and installation in other areas,
 31 to permit such employee to be absent in connection with such trip
 32 without any loss in pay and to refund to such employee or to such
 33 member his reasonable hotel and board bills and necessary
 34 transportation expenses. To pay teaching personnel for time spent
 35 in sponsoring and working with school related trips or activities.

36 (9) To transport children to and from school, when in the opinion
 37 of the governing body such transportation is necessary, including
 38 but not limited to considerations for the safety of such children
 39 and without regard to the distance they live from the school, such
 40 transportation to be otherwise in accordance with the laws
 41 applicable thereto.

42 (10) To provide a lunch program for a part or all of the students

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1 attending the schools of the school corporation, including but not
 2 limited to the establishment of kitchens, kitchen facilities, kitchen
 3 equipment, lunch rooms, the hiring of the necessary personnel to
 4 operate such program, and the purchase of any material and
 5 supplies therefor, charging students for the operational costs of
 6 such lunch program, fixing the price per meal or per food item. To
 7 operate such lunch program as an extracurricular activity, subject
 8 to the supervision of the governing body. To participate in any
 9 surplus commodity or lunch aid program.

10 (11) To purchase textbooks, to furnish them without cost or to
 11 rent them to students, to participate in any textbook aid program,
 12 all in accordance with applicable law.

13 (12) To accept students transferred from other school corporations
 14 and to transfer students to other school corporations in accordance
 15 with applicable law.

16 (13) To levy taxes, to make budgets, to appropriate funds, and to
 17 disburse the money of the school corporation in accordance with
 18 the laws applicable thereto. To borrow money against current tax
 19 collections and otherwise to borrow money, in accordance with
 20 IC 20-5-4.

21 (14) To purchase insurance, ~~or to~~ establish and maintain a
 22 program of self-insurance, **or enter into an interlocal agreement**
 23 **with one (1) or more school corporations to establish and**
 24 **maintain a cooperative risk management program** relating to
 25 the liability of the school corporation or its employees in
 26 connection with motor vehicles or property and for any additional
 27 coverage to the extent permitted and in accordance with
 28 IC 34-13-3-20. To purchase additional insurance, ~~or to~~ establish
 29 and maintain a program of self-insurance, **or enter into an**
 30 **interlocal agreement with one (1) or more school corporations**
 31 **to establish and maintain a cooperative risk management**
 32 **program** protecting the school corporation and members of the
 33 governing body, employees, contractors, or agents of the school
 34 corporation from any liability, risk, accident, or loss related to any
 35 school property, school contract, school or school related activity,
 36 including but not limited to the purchase of insurance or the
 37 establishment and maintenance of a self-insurance program
 38 protecting such persons against false imprisonment, false arrest,
 39 libel, or slander for acts committed in the course of their
 40 employment, protecting the school corporation for fire and
 41 extended coverage and other casualty risks to the extent of
 42 replacement cost, loss of use, and other insurable risks relating to

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1 any property owned, leased, or held by the school corporation. To:
 2 (A) participate in a state employee health plan under
 3 IC 5-10-8-6.6;
 4 (B) purchase insurance; or
 5 (C) establish and maintain a program of self-insurance;
 6 to benefit school corporation employees, which may include
 7 accident, sickness, health, or dental coverage, provided that any
 8 plan of self-insurance shall include an aggregate stop-loss
 9 provision.
 10 (15) To make all applications, to enter into all contracts, and to
 11 sign all documents necessary for the receipt of aid, money, or
 12 property from the state government, the federal government, or
 13 from any other source.
 14 (16) To defend any member of the governing body or any
 15 employee of the school corporation in any suit arising out of the
 16 performance of his duties for or employment with, the school
 17 corporation, provided the governing body by resolution
 18 determined that such action was taken in good faith. To save any
 19 such member or employee harmless from any liability, cost, or
 20 damage in connection therewith, including but not limited to the
 21 payment of any legal fees, except where such liability, cost, or
 22 damage is predicated on or arises out of the bad faith of such
 23 member or employee, or is a claim or judgment based on **his the**
 24 **member's or employee's** malfeasance in office or employment.
 25 (17) To prepare, make, enforce, amend, or repeal rules,
 26 regulations, and procedures for the government and management
 27 of the schools, property, facilities, and activities of the school
 28 corporation, its agents, employees, and pupils and for the
 29 operation of its governing body, which rules, regulations, and
 30 procedures may be designated by any appropriate title such as
 31 "policy handbook", "bylaws", or "rules and regulations".
 32 (18) To ratify and approve any action taken by any member of the
 33 governing body, any officer of the governing body, or by any
 34 employee of the school corporation after such action is taken, if
 35 such action could have been approved in advance, and in
 36 connection therewith to pay any expense or compensation
 37 permitted under IC 20-5-1 through IC 20-5-6 or any other law.
 38 (19) To exercise any other power and make any expenditure in
 39 carrying out its general powers and purposes provided in this
 40 chapter or in carrying out the powers delineated in this section
 41 which is reasonable from a business or educational standpoint in
 42 carrying out school purposes of the school corporation, including

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1 but not limited to the acquisition of property or the employment
 2 or contracting for services, even though such power or
 3 expenditure shall not be specifically set out herein. The specific
 4 powers set out in this section shall not be construed to limit the
 5 general grant of powers provided in this chapter except where a
 6 limitation is set out in IC 20-5-1 through IC 20-5-6 by specific
 7 language or by reference to other law.

8 SECTION 2. IC 20-5-2.7 IS ADDED TO THE INDIANA CODE
 9 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]:

11 **Chapter 2.7. Cooperative Risk Management Programs**

12 **Sec. 1. As used in this chapter, "aggregate insurance coverage"**
 13 **means the coverage provided by an insurance contract that:**

- 14 (1) is purchased by a cooperative program; and
 15 (2) provides excess coverage if the aggregate amount of claims
 16 submitted by member school corporations and payable by the
 17 self-insurance fund exceeds the total amount of self-insured
 18 risk retained by the members in a fiscal year.

19 **Sec. 2. As used in this chapter, "commissioner" means the**
 20 **insurance commissioner appointed under IC 27-1-1-2.**

21 **Sec. 3. As used in this chapter, "cooperative program" means a**
 22 **cooperative risk management program established under this**
 23 **chapter.**

24 **Sec. 4. As used in this chapter, "member" refers to a school**
 25 **corporation that enters into an interlocal agreement with another**
 26 **school corporation to establish a cooperative program.**

27 **Sec. 5. As used in this chapter, "self-insurance fund" means an**
 28 **actuarially sound fund established by a cooperative program as a**
 29 **reserve to cover self-insured risk retained by the members for**
 30 **losses covered under this chapter and to pay premiums for**
 31 **aggregate insurance coverage and specific insurance coverage**
 32 **required under this chapter.**

33 **Sec. 6. As used in this chapter, "specific insurance coverage"**
 34 **means the coverage provided by one (1) or more insurance**
 35 **contracts that:**

- 36 (1) are purchased by a cooperative program; and
 37 (2) provide excess coverage for a part of a specific claim that
 38 exceeds the amount covered by the self-insurance fund.

39 **Sec. 7. (a) Two (2) or more school corporations may enter into**
 40 **an interlocal agreement under IC 36-1-7 to establish a cooperative**
 41 **risk management program through which the school corporations**
 42 **agree to maintain a program of joint self-insurance to cover**

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1 certain retained risks and to jointly purchase aggregate insurance
 2 coverage and specific insurance coverage, including the following:
 3 (1) Casualty insurance, including general and professional
 4 liability coverage and student accident insurance.
 5 (2) Property insurance.
 6 (3) Automobile insurance, including motor vehicle liability
 7 insurance coverage and security for motor vehicles owned or
 8 operated, and protection against other liability and loss
 9 associated with the ownership of motor vehicles.
 10 (4) Surety and fidelity insurance coverage.
 11 (5) Umbrella and excess insurance coverage.
 12 (6) Worker's compensation coverage.
 13 (b) A cooperative program established under this chapter is a
 14 separate legal entity with the power to:
 15 (1) sue and be sued;
 16 (2) make contracts; and
 17 (3) hold and dispose of real and personal property.
 18 **Sec. 8. A cooperative program is not an insurance company or**
 19 **insurer under the laws of Indiana. The development,**
 20 **administration, and operation of a cooperative program does not**
 21 **constitute the business of insurance and is not subject to the**
 22 **insurance laws of Indiana.**
 23 **Sec. 9. (a) A cooperative program shall:**
 24 (1) establish a self-insurance fund with an aggregate limit on
 25 the total amount of self-insured risk retained by the members
 26 in a fiscal year; and
 27 (2) maintain aggregate insurance coverage and specific
 28 insurance coverage.
 29 (b) A self-insurance fund established under subsection (a) must
 30 be funded at the beginning of each fiscal year by a contribution
 31 from each member in an amount that reflects the member's share
 32 of self-insured risk and other costs of the cooperative program.
 33 (c) Annual contributions to the self-insurance fund under
 34 subsection (b) must be:
 35 (1) determined using generally accepted actuarial standards;
 36 and
 37 (2) set to fund at least one hundred percent (100%) of the
 38 self-insured risk retained by the members in a fiscal year plus
 39 the other costs of the cooperative program, including
 40 premiums for aggregate insurance coverage and specific
 41 insurance coverage.
 42 **Sec. 10. (a) An interlocal agreement entered into under section**

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- 1 **7 of this chapter must:**
- 2 (1) **establish the cooperative program as a separate legal**
- 3 **entity; and**
- 4 (2) **specify the organization, composition, and powers of the**
- 5 **governing authority of the cooperative program as required**
- 6 **by IC 36-1-7-3.**
- 7 (b) **The governing authority of the cooperative program shall**
- 8 **adopt bylaws, including the following:**
- 9 (1) **A financial plan setting forth in general terms:**
- 10 (A) **the types of risks covered under the cooperative**
- 11 **program;**
- 12 (B) **the aggregate limit on the total amount of self-insured**
- 13 **risk retained by the cooperative program in a fiscal year;**
- 14 (C) **the minimum amount of specific insurance coverage**
- 15 **and aggregate insurance coverage that must be maintained**
- 16 **by the cooperative program; and**
- 17 (D) **the procedure for determining each member's annual**
- 18 **contribution to the self-insurance fund.**
- 19 (2) **A plan of management that provides for:**
- 20 (A) **the responsibility of the governing authority with**
- 21 **regard to:**
- 22 (i) **maintaining the amount of reserves in the**
- 23 **self-insurance fund;**
- 24 (ii) **disposing of surpluses; and**
- 25 (iii) **administering the cooperative program in the event**
- 26 **of termination;**
- 27 (B) **the basis on which new members may be admitted to,**
- 28 **and existing members may leave, the cooperative program;**
- 29 **and**
- 30 (C) **other provisions necessary or desirable for the**
- 31 **operation of the cooperative program.**
- 32 **Sec. 11. (a) A cooperative program shall have an annual audit**
- 33 **performed by an independent certified public accounting firm**
- 34 **according to guidelines established by the state board of accounts.**
- 35 (b) **Not later than one hundred eighty (180) calendar days after**
- 36 **the close of a cooperative program's fiscal year, the cooperative**
- 37 **program must furnish the cooperative program's members with**
- 38 **audited financial statements certified by an independent certified**
- 39 **public accounting firm.**
- 40 (c) **Copies of the audit report and certified financial statements**
- 41 **required under this section must be provided to the commissioner**
- 42 **and the state board of accounts not later than one hundred eighty**

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(180) calendar days after the close of the cooperative program's fiscal year.

(d) If a cooperative program fails to have the annual audit performed as required by subsection (a), the commissioner shall cause the audit to be performed at the expense of the cooperative program.

(e) The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial statements required under this section may be reviewed by the commissioner.

Sec. 12. The assets of a cooperative program must be:

- (1) treated as a joint investment fund under IC 20-5-11-5; and
- (2) invested under IC 5-13-9 in the same manner as other public funds.

Sec. 13. Not later than sixty (60) calendar days after the beginning of a cooperative program's fiscal year, the governing authority shall submit the following to the commissioner:

- (1) A copy of the bylaws adopted by the cooperative program.
- (2) A copy of each coverage document form issued by the cooperative program.
- (3) A copy of the insurance contracts purchased by the cooperative program, including contracts for aggregate insurance coverage and specific insurance coverage.
- (4) A copy of the interlocal agreement.

Sec. 14. (a) If a cooperative program fails to comply with the requirements of this chapter, the commissioner shall issue a notice of noncompliance to the cooperative program.

(b) Not later than thirty (30) calendar days after a cooperative program receives a notice of noncompliance under subsection (a), the cooperative program shall file with the commissioner a written request for time to restore compliance and a plan to restore compliance.

(c) The commissioner, on receiving the written request and plan to restore compliance filed under subsection (b), may grant a period of one (1) year during which the cooperative program may restore compliance.

(d) If a plan to restore compliance is:

- (1) not filed under subsection (b);
- (2) filed under subsection (b) and not approved by the commissioner; or
- (3) filed under subsection (b), approved by the commissioner, and at the end of one (1) year the cooperative program is not

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1 **in compliance with this chapter;**
2 **the commissioner may grant additional time to comply, or the**
3 **commissioner may suspend, limit, or terminate the authority of the**
4 **cooperative program to do business in Indiana.**

5 **Sec. 15. (a) Motor vehicle coverage provided by a cooperative**
6 **program must provide the ability for a member to respond in**
7 **damages for liability arising out of the ownership, maintenance, or**
8 **use of a motor vehicle in amounts at least equal to the amounts**
9 **required under IC 9-25-4.**

10 **(b) A member that participates in the motor vehicle coverage**
11 **provided by a cooperative program is considered to meet the**
12 **financial responsibility requirements set forth in IC 9-25-4, and an**
13 **application for a certificate of self-insurance under IC 9-25-4-11 is**
14 **not required.**

15 **Sec. 16. Information regarding the:**
16 **(1) part of funds; or**
17 **(2) liability reserve;**
18 **established by a cooperative program to satisfy a specific claim or**
19 **cause of action is confidential and is not subject to subpoena or**
20 **order to produce, except in a supplementary or ancillary**
21 **proceeding to enforce a judgment.**

22 **Sec. 17. The department of insurance may adopt rules under**
23 **IC 4-22-2 to implement this chapter.**

24 **SECTION 3. IC 21-2-5.6-2 IS AMENDED TO READ AS**
25 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The**
26 **self-insurance fund may be used to provide monies for the following**
27 **purposes:**

- 28 (1) the payment of any judgment rendered against the school
29 corporation, or rendered against any officer or employee of the
30 school corporation for which the school corporation is liable
31 under IC 34-13-2, IC 34-13-3, or IC 34-13-4 (or IC 34-4-16.5,
32 IC 34-4-16.6, or IC 34-4-16.7 before their repeal);
- 33 (2) the payment of any claim or settlement for which the school
34 corporation is liable pursuant to IC 34-13-2, IC 34-13-3, or
35 IC 34-13-4 (or IC 34-4-16.5, IC 34-4-16.6, or IC 34-4-16.7 before
36 their repeal);
- 37 (3) the payment of any premium, management fee, claim, or
38 settlement for which the school corporation is liable pursuant to
39 any federal or state statute including but not limited to payments
40 pursuant to IC 22-3 and IC 22-4; **or**
- 41 (4) the payment of any settlement or claim for which insurance
42 coverage is permitted under IC 20-5-2-2(14); **or**

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1 **(5) the payment of a contribution to the self-insurance fund of**
2 **a cooperative risk management program under IC 20-5-2.7-9.**
3 **SECTION 4. An emergency is declared for this act.**

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