

LEGISLATIVE HISTORY CHECKLIST
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(Joint Insurance pools--
environmental liability)

NJSA: 40A:10-38.1 to 40A:10-38.12

LAWS OF: 1993 **CHAPTER:** 269

BILL NO: A2603

SPONSOR(S) Connors and Moran

DATE INTRODUCED: May 17, 1993

COMMITTEE: **ASSEMBLY:** Local Government
SENATE: Community Affairs

AMENDED DURING PASSAGE: Yes Amendments during passage
Second reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** June 17, 1993
SENATE: June 28, 1993

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

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[SECOND REPRINT]
ASSEMBLY, No. 2603

STATE OF NEW JERSEY

INTRODUCED MAY 17, 1993

By Assemblymen CONNORS and MORAN

1 AN ACT concerning joint insurance funds for local governmental
2 units, amending P.L.1976, c.68¹, and N.J.S.40A:2-22¹ and
3 amending and supplementing P.L.1983, c.372.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. (New section) In addition to the powers and authority
8 granted to commissioners pursuant to section 3 of P.L.1983, c.372
9 (C.40A:10-38), the commissioners of a joint insurance fund
10 established pursuant to subsection b. of section 1 of P.L.1983,
11 c.372 (C.40A:10-36) shall have the power: a. to adopt and use a
12 corporate seal; b. to sue and be sued; and c. to bond or to borrow
13 funds and incur indebtedness by other means, including letters of
14 credit, for the purpose of providing environmental impairment
15 liability insurance, and to provide for and secure the payment of
16 bonds and indebtedness, except that the total aggregate amount
17 of any such bonds, borrowings and letters of credit outstanding at
18 any one time shall not exceed \$10,000,000. ¹Bonds shall be sold
19 by a joint insurance fund pursuant to the "Local Bond Law,"
20 N.J.S.40A:2-1 et seq.), but shall not be subject to the debt
21 limitation set forth in N.J.S.40A:2-6.¹

22 2. (New section) As used in this act:

23 a. "Bond" means bonds and other obligations, such as letters of
24 credit, authorized and issued by a joint insurance fund.

25 b. "Bond resolution" means a resolution adopted by a joint
26 insurance fund describing the bonds to be authorized and issued
27 and the bonds or indebtedness to be funded or refunded.

28 c. "Joint insurance fund" or "fund" means a joint insurance
29 fund created pursuant to subsection b. of section 1 of P.L.1983,
30 c.372 (C.40A:10-36).

31 3. (New section) A copy of ¹[each resolution or ordinance for
32 the creation of a joint insurance fund adopted pursuant to
33 subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), duly
34 certified by the appropriate officer of the local unit,] the proof
35 of approval of the bylaws and plan of risk management issued by
36 the Commissioner of Insurance pursuant to N.J.S.40A:10-41
37 section 6 of P.L.1983, c.372 (C.40A:10-41)¹ shall be filed in the
38 office of the Secretary of State¹, the Director of the Division of
39 Local Government Services, and the Commissioner of
40 Insurance¹. Upon proof of such filing ¹[of certified copies of the
41 resolution or ordinance]¹, the joint insurance fund therein

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALG committee amendments adopted June 3, 1993.

² Assembly floor amendments adopted June 10, 1993.

1 referred to shall, in any suit, action or proceeding involving the
2 validity or enforcement of, or relating to, any contract or
3 obligation or act of the joint insurance fund, be conclusively
4 deemed to have been lawfully and properly created, organized
5 and established and authorized to transact business and exercise
6 its powers under this act. Copies of ¹[a certified resolution or
7 ordinance] the filing¹, duly certified by the Secretary of State,
8 shall be admissible in evidence in any suit, action or proceeding
9 and shall be conclusive evidence of due and proper filing thereof.

10 4. (New section) a. For the purpose of raising funds to
11 establish an environmental impairment liability insurance pool or
12 for the purpose of funding or refunding a bond or other
13 indebtedness, including a letter of credit ¹in connection with
14 environmental impairment liability insurance¹, a joint insurance
15 fund shall have the power to authorize and issue or provide for
16 the issuance of bonds pursuant to this act. No funds so raised
17 shall be used for administrative expenses of the joint insurance
18 fund. For such purpose, a joint insurance fund shall adopt a bond
19 resolution which shall (1) describe the bonds to be authorized and
20 issued and the bonds or indebtedness to be funded or refunded, if
21 any; (2) state the cost or estimated cost of the project, if any;
22 and (3) provide for the issuance of the bonds in accordance with
23 section 5 of this act.

24 b. No bond resolution shall be adopted by a joint insurance
25 fund pursuant to subsection a. of this section unless member local
26 units representing at least two-thirds of the joint insurance
27 fund's current annual assessments have approved the proposed
28 bond resolution by resolution or ordinance of each approving
29 member local unit, which resolution or ordinance has been duly
30 certified by the appropriate officer of the local unit and filed
31 with the secretary of the joint insurance fund.

32 ¹c. Any debt incurred by a joint insurance fund pursuant to
33 P.L. _____, c. _____ (C. _____) (pending before the Legislature
34 as this bill) shall be subject to the oversight provisions of sections
35 6, 7 and 8 of P.L.1983, c.313 (C40A:5A-6 through 40A:5A-8).¹

36 5. (New section) Upon adoption of a bond resolution, a joint
37 insurance fund shall have the power to incur indebtedness, borrow
38 money and issue its bonds for the purpose of raising funds to
39 establish an environmental impairment liability insurance pool or
40 funding or refunding any bonds or other indebtedness, including a
41 letter of credit. A bond shall be authorized by the bond
42 resolution and may be issued in one or more series. A bond shall
43 bear the date provided in the resolution and shall mature on a
44 date not exceeding ¹[40] 20¹ years from the date on the bond. A
45 bond shall bear interest at a rate within the maximum rate, be in
46 the denomination and the form, carry the conversion or
47 registration privileges, have such rank or priority, be executed in
48 such manner, be payable from such sources in such medium of
49 payment at such place or places within or without the State, and
50 be subject to such terms of redemption, with or without premium,
51 as the bond resolution may provide.

52 6. (New section) Bonds of a joint insurance fund may be sold
53 by the fund at public or private sale at a price determined by the
54 commissioners of the fund.

1 7. (New section) A joint insurance fund ¹[may] shall¹ cause a
2 copy of a bond resolution adopted by it to be filed for public
3 inspection in its office and in the offices of the clerks of the
4 local units which are members of the fund and ¹[may] shall¹
5 thereupon cause to be published in a newspaper published or
6 circulating in the jurisdiction of the member local units a notice
7 stating the fact and date of the adoption, the places where the
8 bond resolution has been filed for public inspection, and the date
9 of the first publication. The notice also shall state that any
10 action or proceeding of any kind in any court questioning the
11 validity or proper authorization of a bond provided for by the
12 bond resolution, or the validity of any covenant, agreement or
13 contract provided for by the bond resolution shall be commenced
14 within 20 days after the first publication of the notice. If after
15 the notice is published, no action or proceeding questioning the
16 validity or proper authorization of a bond provided for by the
17 bond resolution referred to in the notice, or the validity of a
18 covenant, agreement or contract provided for by the bond
19 resolution is commenced within 20 days after the first publication
20 of the notice, then all member local units of the fund, their
21 residents, and all other persons shall be forever barred from
22 commencing an action or proceeding in a court or from pleading a
23 defense to an action or proceeding, questioning the validity of the
24 creation and establishment of the joint insurance fund, or the
25 validity or proper authorization of the bonds, or the validity of a
26 covenant, agreement or contract, and the fund shall be
27 conclusively deemed to have been validly created and established
28 and to be authorized to transact business and exercise powers as
29 a joint insurance fund under this act, and the bond, covenant,
30 agreement or contracts shall be conclusively deemed to be a valid
31 and binding obligation in accordance with its terms and tenor.

32 8. (New section) Any provision of any law to the contrary
33 notwithstanding, bonds issued pursuant to this act shall be fully
34 negotiable within the meaning and for all purposes of the
35 negotiable instruments law of the State, and each holder of a
36 bond, or of any coupon appurtenant thereto, by accepting the
37 bond or coupon shall be conclusively deemed to have agreed that
38 the bond or coupon is and shall be fully negotiable within the
39 meaning and for all purposes of the negotiable instruments law.

40 9. (New section) A joint insurance fund, in order to secure the
41 payment of its bonds shall have the power by provision in the
42 bond resolution to covenant and agree with the several holders of
43 a bond, as to:

44 a. the custody, security, use, expenditure or application of the
45 proceeds of a bond;

46 b. payment of the principal of or interest on a bond and the
47 sources and methods thereof, the rank or priority of a bond
48 obligation as to a lien or security, or the acceleration of the
49 maturity of a bond;

50 c. the use and disposition of any moneys of the joint insurance
51 fund;

52 d. pleading, setting aside, depositing or trusteeing all or any
53 moneys of the joint insurance fund to secure the payment of the
54 principal of or interest on the bond or the payment of expenses

1 of operation of the fund, and the powers and duties of a trustee
2 with regard thereto;

3 e. the setting aside out of the moneys of the joint insurance
4 fund of reserves and sinking funds, and the source, custody,
5 security, regulation, application and disposition thereof;

6 f. determination or definition of the moneys of the joint
7 insurance fund or of the expenses of its operation;

8 g. the assessments or other charges imposed by the joint
9 insurance fund and the fixing, establishment, collection and
10 enforcement of same, the amount to be raised thereby, and the
11 disposition and application of the amount charged or collected;

12 h. the assumption or payment of any indebtedness, lien or
13 other claim against the joint insurance fund or any obligation
14 having or which may have a lien on any moneys of the fund;

15 i. limitations on the issuance of additional bonds or on the
16 incurrence of indebtedness of the joint insurance fund;

17 j. vesting in a trustee or trustees within or without the State
18 the rights, powers and duties in trust determined by the joint
19 insurance fund, which powers and duties may include any or all of
20 the rights, powers and duties of the trustee appointed by the
21 holders of bonds pursuant to section 10 of this act, and limiting or
22 abrogating the right of the holders to appoint a trustee pursuant
23 to section 10 of this act or limiting the rights, duties and powers
24 of the trustee;

25 k. payment of costs or expenses incident to the enforcement
26 of the bonds or of the provisions of the bond resolution or of any
27 covenant or contract with the holders of the bonds;

28 l. the procedure, if any, by which the terms of a covenant or
29 contract with, or duty to, the holders of bonds may be amended
30 or abrogated, which holders of bonds are required to consent to
31 such an amendment or abrogation before it can be enforced, and
32 the manner in which the consent may be given or evidenced; or

33 m. any other matter or course of conduct which, by recital in
34 the bond resolution, is declared to further secure the payment of
35 the principal of or interest on the bonds.

36 All provisions of the bond resolution and all covenants and
37 agreements shall constitute valid and legally binding contracts
38 between the joint insurance fund and the several holders of the
39 bonds, regardless of the time of issuance of the bonds, and shall
40 be enforceable by any holder by appropriate action, suit or
41 proceeding in lieu of prerogative writ.

42 10. (New section) a. If the bond resolution of a joint
43 insurance fund authorizing or providing for the issuance of a
44 series of bonds provides in substance that the holders of the bonds
45 in the series shall be entitled to the benefits of this section, then
46 in the event that there is a default in the payment of principal of
47 or interest on any bonds of the series after the same becomes
48 due, whether at maturity or upon call for redemption, and the
49 default continues for a period of 30 days, or in the event that the
50 joint insurance fund fails or refuses to carry out and perform the
51 terms of a contract with the holders the bonds, and the failure or
52 refusal continues for a period of 30 days after written notice to
53 the joint insurance fund of its existence and nature, the holders
54 of 25 percent in aggregate principal amount of the bonds of the

1 series then outstanding by instrument or instruments filed in the
2 office of the Secretary of State and proved and acknowledged in
3 the same manner as a deed to be recorded, may appoint a trustee
4 to represent the holders of the bonds of the series for the purpose
5 provided in this section.

6 b. The trustee may and upon written request of the holders of
7 25 percent in aggregate principal amount of the bonds of the
8 series then outstanding shall, in the trustee's own name:

9 (1) by any action, writ, proceeding in lieu of prerogative writ,
10 or other proceeding, enforce all rights of the holders of the
11 bonds, including the right to require the joint insurance fund to
12 charge and collect assessments adequate to carry out a contract
13 as to, or pledge of, moneys of the fund, and to require the fund to
14 carry out and perform the terms of a contract with the holders of
15 the bonds or its duties under this act;

16 (2) bring an action upon all or any part of the bonds or interest
17 coupons or claims appurtenant thereto;

18 (3) by action, require the joint insurance fund to account as if
19 it were the trustee of an express trust for the holders of the
20 bonds;

21 (4) by action, enjoin any acts or things which may be unlawful
22 or in violation of the rights of the holders of the bonds; or

23 (5) declare all the bonds due and payable, whether or not in
24 advance of maturity, upon 30 days' prior notice in writing to the
25 joint insurance fund and, if all defaults shall be made good, then
26 with the consent of the holders of 25 percent of the principal
27 amount of the bonds then outstanding, annul the declaration and
28 its consequences.

29 c. The trustee shall, in addition to the foregoing, have and
30 possess all of the powers necessary or appropriate for the
31 exercise of the functions specifically set forth herein or incident
32 to the general representation of the holders of bonds of the series
33 in the enforcement and protection of their rights.

34 d. In any action or proceeding by the trustee, the fees, counsel
35 fees and expenses of the trustee and of the receiver, if any,
36 appointed pursuant to this act, shall constitute taxable costs and
37 disbursements, and all costs and disbursements allowed by the
38 court shall be a first charge upon any assessments and moneys of
39 the joint insurance fund pledged for the payment or security of
40 bonds of the series.

41 11. (New section) If the bond resolution of a joint insurance
42 fund authorizing or providing for the issuance of a series of its
43 bonds provides in substance that the holders of the bonds of the
44 series are entitled to the benefits of section 10 of this act and
45 further provides in substance that any trustee appointed pursuant
46 to section 10 of this act or having the powers of such a trustee
47 has the powers provided by this section, then the trustee, whether
48 or not all of the bonds of the series have been declared due and
49 payable, shall be entitled as of right to the appointment of a
50 receiver of the joint insurance fund, and the receiver may enter
51 upon and take possession of all moneys and other property of the
52 joint insurance fund and fix, charge, collect, enforce and receive
53 the assessments and all moneys thereafter arising subject to any
54 pledge thereof or contract with the holders of the bonds relating

1 thereto and perform the duties and carry out the contracts and
2 obligations of the joint insurance fund in the same manner as the
3 fund itself might do and under the direction of the court.

4 12. (New section) Neither the commissioners of the joint
5 insurance fund nor any person executing bonds issued pursuant to
6 this act shall be liable personally on the bonds by reason of the
7 issuance thereof. Bonds issued by a joint insurance fund pursuant
8 to this act shall not be in any way a debt or liability of the State,
9 either legal, moral or otherwise, nor shall they be in any way a
10 debt or liability of any member local unit of the fund, either
11 legal, moral or otherwise, except as provided by P.L.1983, c.372
12 (C.40A:10-36 et seq.), and nothing in this act shall be construed
13 to authorize any joint insurance fund to incur any indebtedness on
14 behalf of or in any way to obligate the State or any member local
15 unit.

16 ¹Nothing in this act shall be construed to alter or impair the
17 power of the commissioner to suspend or terminate the authority
18 of any joint insurance fund created pursuant to subsection b. of
19 section 1 of P.L.1983, c.372 (C.40A:10-36) or to assume control
20 of the insurance fund as provided under section 9 of P.L.1983,
21 c.372 (40A:10-44) in order to enable a fund to meet its
22 obligations, cover its expected losses or to liquidate, rehabilitate
23 or otherwise modify its affairs.¹

24 13. Section 1 of P.L.1983, c.372 (C.40A:10-36) is amended to
25 read as follows:

26 1. a. The governing body of any local unit, including any
27 contracting unit as defined in section 2 of P.L.1971, c.198
28 (C.40A:11-2), may by resolution or ordinance, as appropriate,
29 agree to join together with any other local unit or units to
30 establish a joint insurance fund for the purpose of insuring against
31 liability, property damage, and workers' compensation as
32 provided in Articles 3 and 4 of chapter 10 of Title 40A of the
33 New Jersey Statutes, and providing contributory or
34 non-contributory group health insurance or group term life
35 insurance, or both, to employees or their dependents or both,
36 through self insurance, the purchase of commercial insurance or
37 reinsurance, or any combination thereof, and may appropriate
38 such moneys as are required therefor. The maximum risk to be
39 retained for group term life insurance by a joint insurance fund
40 on a self-insured basis shall not exceed a face amount of \$5,000
41 per covered employee or dependent or more if approved by the
42 Commissioners of Insurance and Community Affairs. [b.] As
43 used in this [section] subsection: (1) "life insurance" means life
44 insurance as defined pursuant to N.J.S.17B:17-3; (2) "health
45 insurance" means health insurance as defined pursuant to
46 N.J.S.17B:17-4 or service benefits as provided by health service
47 corporations, hospital service corporations or medical service
48 corporations authorized to do business in this State; and (3)
49 "dependent" means dependent as defined pursuant to
50 N.J.S.40A:10-16.

51 b. The governing body of any local unit, including any
52 contracting unit as defined in section 2 of P.L.1971, c.198
53 (C.40A:11-2), may by resolution or ordinance, as appropriate,
54 agree to join together with any other local unit or units to

1 establish a joint insurance fund for the sole purpose of insuring
2 against bodily injury and property damage claims arising from
3 environmental impairment liability and legal representation
4 therefor to the extent and for coverages approved by the
5 Commissioner of Insurance.

6 (cf: P.L.1990, c.120, s.1)

7 14. Section 2 of P.L.1983, c.372 (C.40A:10-37) is amended to
8 read as follows:

9 2. Upon the establishment of a joint insurance fund, the
10 officer or body of each local unit having the power to make
11 appointments for the unit shall appoint one member of the
12 governing body or employee of the local unit to represent that
13 local unit as insurance fund commissioner. Each local unit may
14 also appoint an alternate insurance fund commissioner who shall
15 be a member of the governing body or employee of the local unit.
16 Commissioners and alternates who are members of the governing
17 body shall hold office for two years or for the remainder of their
18 terms of office as members of the governing body, whichever
19 shall be less, and until their successors shall have been duly
20 appointed and qualified. Commissioners and alternates who are
21 employees of the local unit shall hold office at the pleasure of
22 the appointing officer or body. In the event that the number of
23 local units represented is an even number, an additional
24 commissioner shall be annually selected by the participating local
25 units on a rotating basis. ²[The bylaws of a joint insurance fund
26 may provide that each commissioner's vote be proportional to
27 the current year's assessment of the local unit represented by
28 the commissioner.]² If the total number of member local units
29 exceeds seven, the commissioners shall annually meet to select
30 not more than seven commissioners to serve as the executive
31 committee of the fund. The commissioners may also select not
32 more than seven commissioners to serve as alternates on the
33 executive committee. The executive committee shall exercise
34 the full power and authority of the commission. Vacancies on the
35 executive committee shall be filled by election of the entire
36 board. The commissioners shall serve without compensation,
37 except that the commissioners may vote to pay themselves a fee
38 for attending commission meetings not to exceed \$150 per
39 meeting and the commissioners may vote to pay commissioners
40 who serve on an executive committee a fee for attending
41 executive committee meetings not to exceed \$150 per meeting.
42 Any vacancy in the office of insurance fund commissioner or
43 alternate, caused by any reason other than expiration of term as
44 a member of the local unit governing body, shall be filled by the
45 appointing authority in the manner generally prescribed by law.
46 The commission shall annually elect a chairman and a secretary.

47 ²In the case of a joint insurance fund established for the
48 purposes of providing environmental liability coverage pursuant
49 to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36),
50 each member of that joint insurance fund shall have proportional
51 voting based upon the current year's assessment.²

52 (cf: P.L.1989, c.253, s.2)

53 ¹[15. Section 3 of P.L.1983, c.372 (C.40A:10-38) is amended to
54 read as follows:

1 3. a. The commissioners of a joint insurance fund shall have
2 the powers and authority granted to commissioners of individual
3 local insurance funds under the provisions of subsections a., b., c.,
4 and e. of N.J.S.40A:10-10.

5 b. The commissioners may invest the funds, including workers'
6 compensation funds, as authorized under the provisions of
7 subsection b. of N.J.S.40A:10-10; or the commissioners may
8 invest the funds, including workers' compensation funds, in
9 investments which are approved for investment by regulation of
10 the State Investment Council for surplus moneys of the State; or
11 the commissioners may transfer moneys held in the fund to the
12 Director of the Division of Investment in the Department of the
13 Treasury for investment on behalf of the fund in accordance with
14 the standards governing the investment of other funds which are
15 managed under the rules and regulations of the State Investment
16 Council. However, any moneys transferred to the director for
17 investment may not thereafter be withdrawn except upon
18 withdrawal or expulsion of a member local unit from the fund or
19 termination of the fund or in specific amounts in payment of
20 specific claims, administrative expenses or member dividends
21 upon affidavit of the director or other chief executive officer of
22 the fund.

23 The commissioners may enter into agreements with other joint
24 insurance funds or the State Treasurer to jointly invest funds
25 pursuant to this subsection and to share the expense of
26 administrating the investment program.

27 c. The commissioners or the executive board, as the case may
28 be, of any joint insurance fund established pursuant to the
29 provisions of this act shall be subject to and operate in
30 compliance with the provisions of the "Local Fiscal Affairs Law"
31 (N.J.S.40A:5-1 et seq.), the "Local Government Ethics Law,"
32 P.L.1991, c.29 (C.40A:9-22.1 et seq.), the "Local Public
33 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and such
34 other rules and regulations as govern the custody, investment and
35 expenditure of public funds by local units.

36 (cf: P.L.1992, c.53, s.2)]¹

37 ¹[16.] 15.1 (New section) The bylaws of a joint insurance fund
38 may include procedures to recognize and pay commissions or fees
39 to insurance producers appointed by the fund, if any, or producers
40 appointed by the member local units, if any, to advise the
41 member local units on insurance related matters and to provide
42 other related services to member local units as specified in the
43 bylaws.

44 The commissioners of a joint insurance fund shall file with the
45 commissioner a description of any producer arrangement plan by
46 which producers, who shall be licensed pursuant to P.L.1987,
47 c.293 (C.17:22A-1 et seq.), represent member local units in their
48 dealings with the joint insurance fund. The description shall
49 include, but not be limited to, copies of all producer contracts,
50 which shall include a description of the producers' obligations,
51 responsibilities and compensation; duration of contracts; and an
52 indication whether the contracts are subject to renewal.

53 ¹Whenever a joint insurance fund or member local unit employs
54 a producer to perform risk assessment or risk management, the

1 commissioners of the joint insurance fund shall file with the
2 Commissioner of Insurance a copy of the producer contract for
3 review by the commissioner.¹

4 ¹[17.] 16.¹ Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is
5 amended to read as follows:

6 3. In the preparation of its budget a municipality shall limit
7 any increase in said budget to 5% or the index rate, whichever is
8 less, over the previous year's final appropriations subject to the
9 following exceptions:

10 a. (Deleted by amendment, P.L.1990, c.89.)

11 b. Capital expenditures, including appropriations for current
12 capital expenditures, whether in the capital improvement fund or
13 as a component of a line item elsewhere in the budget, provided
14 that any such current capital expenditure would be otherwise
15 bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

16 c. (1) An increase based upon emergency temporary
17 appropriations made pursuant to N.J.S.40A:4-20 to meet an
18 urgent situation or event which immediately endangers the
19 health, safety or property of the residents of the municipality,
20 and over which the governing body had no control and for which it
21 could not plan and emergency appropriations made pursuant to
22 N.J.S.40A:4-46. Emergency temporary appropriations and
23 emergency appropriations shall be approved by at least
24 two-thirds of the governing body and by the Director of the
25 Division of Local Government Services, and shall not exceed in
26 the aggregate 3% of the previous year's final current operating
27 appropriations.

28 (2) (Deleted by amendment, P.L.1990, c.89.)

29 The approval procedure in this subsection shall not apply to
30 appropriations adopted for a purpose referred to in subsection d.
31 or j. below;

32 d. All debt service, including that of a Type I school district;

33 e. Upon the approval of the Local Finance Board in the
34 Division of Local Government Services, amounts required for
35 funding a preceding year's deficit;

36 f. Amounts reserved for uncollected taxes;

37 g. (Deleted by amendment, P.L.1990, c.89.)

38 h. Expenditure of amounts derived from new or increased
39 construction, housing, health or fire safety inspection or other
40 service fees imposed by State law, rule or regulation or by local
41 ordinance;

42 i. Any amount approved by any referendum;

43 j. Amounts required to be paid pursuant to (1) any contract
44 with respect to use, service or provision of any project, facility
45 or public improvement for water, sewerage, parking, senior
46 citizen housing or any similar purpose, or payments on account of
47 debt service therefor, between a municipality and any other
48 municipality, county, school or other district, agency, authority,
49 commission, instrumentality, public corporation, body corporate
50 and politic or political subdivision of this State; (2) the provisions
51 of article 9 of P.L.1968, c.404 (C.13:17-60 through 13:17-76) by a
52 constituent municipality to the intermunicipal account; (3) any
53 lease of a facility owned by a county improvement authority
54 when the lease payment represents the proportionate amount

- 1 necessary to amortize the debt incurred by the authority in
2 providing the facility which is leased, in whole or in part; and (4)
3 any repayments under a loan agreement entered into in
4 accordance with the provisions of section 5 of P.L.1992, c.89.
- 5 k. (Deleted by amendment, P.L.1987, c.74.)
- 6 l. Appropriations of federal, county, independent authority or
7 State funds, or by grants from private parties or nonprofit
8 organizations for a specific purpose, and amounts received or to
9 be received from such sources in reimbursement for local
10 expenditures. If a municipality provides matching funds in order
11 to receive the federal, county, independent authority or State
12 funds, or the grants from private parties or nonprofit
13 organizations for a specific purpose, the amount of the match
14 which is required by law or agreement to be provided by the
15 municipality shall be excepted;
- 16 m. (Deleted by amendment, P.L.1987, c.74.)
- 17 n. (Deleted by amendment, P.L.1987, c.74.)
- 18 o. (Deleted by amendment, P.L.1990, c.89.)
- 19 p. (Deleted by amendment, P.L.1987, c.74.)
- 20 q. (Deleted by amendment, P.L.1990, c.89.)
- 21 r. Amounts expended to fund a free public library established
22 pursuant to the provisions of R.S.40:54-1 through 40:54-29,
23 inclusive;
- 24 s. (Deleted by amendment, P.L.1990, c.89.)
- 25 t. Amounts expended in preparing and implementing a housing
26 element and fair share plan pursuant to the provisions of
27 P.L.1985, c.222 (C.52:27D-301 et al.) and any amounts received
28 by a municipality under a regional contribution agreement
29 pursuant to section 12 of that act;
- 30 u. Amounts expended to meet the standards established
31 pursuant to the "New Jersey Public Employees' Occupational
32 Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
- 33 v. (Deleted by amendment, P.L.1990, c.89.)
- 34 w. Amounts appropriated for expenditures resulting from the
35 impact of a hazardous waste facility as described in subsection c.
36 of section 32 of P.L.1981, c.279 (C.13:1E-80);
- 37 x. Amounts expended to aid privately owned libraries and
38 reading rooms, pursuant to R.S.40:54-35;
- 39 y. (Deleted by amendment, P.L.1990, c.89.)
- 40 z. (Deleted by amendment, P.L.1990, c.89.)
- 41 aa. Extraordinary expenses, approved by the Local Finance
42 Board, required for the implementation of an interlocal services
43 agreement;
- 44 bb. Any expenditure mandated as a result of a natural disaster,
45 civil disturbance or other emergency that is specifically
46 authorized pursuant to a declaration of an emergency by the
47 President of the United States or by the Governor;
- 48 cc. Expenditures for the cost of services mandated by any
49 order of court, by any federal or State statute, or by
50 administrative rule, directive, order, or other legally binding
51 device issued by a State agency which has identified such cost as
52 mandated expenditures on certification to the Local Finance
53 Board by the State agency;
- 54 dd. Expenditures of amounts actually realized in the local

1 budget year from the sale of municipal assets if appropriated for
2 non-recurring purposes or otherwise approved by the director;

3 ee. Any local unit which is determined to be experiencing
4 fiscal distress pursuant to the provisions of P.L.1987, c.75
5 (C.52:27D-118.24 et seq.), whether or not a local unit is an
6 "eligible municipality" as defined in section 3 of P.L.1987, c.75
7 (C.52:27D-118.26), and which has available surplus pursuant to
8 the spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1
9 et seq.), may appropriate and expend an amount of that surplus
10 approved by the director and the Local Finance Board as an
11 exception to the spending limitation. Any determination
12 approving the appropriation and expenditure of surplus as an
13 exception to the spending limitations shall be based upon:

14 1) the local unit's revenue needs for the current local budget
15 year and its revenue raising capacity;

16 2) the intended actions of the governing body of the local unit
17 to meet the local unit's revenue needs;

18 3) the intended actions of the governing body of the local unit
19 to expand its revenue generating capacity for subsequent local
20 budget years;

21 4) the local unit's ability to demonstrate the source and
22 existence of sufficient surplus as would be prudent to appropriate
23 as an exception to the spending limitations to meet the operating
24 expenses for the local unit's current budget year; and

25 5) the impact of utilization of surplus upon succeeding budgets
26 of the local unit;

27 ff. Amounts expended for the staffing and operation of the
28 municipal court;

29 gg. Amounts appropriated for the cost of ¹[providing insurance
30 or self-insurance coverage for the municipality, boards of
31 education and boards, agencies, commissions, officers and
32 employees thereof for environmental impairment liability,
33 including defense costs] administering a joint insurance fund
34 established pursuant to subsection b. of section 1 of P.L.1983,
35 c.372 (C.40A:10-36), but not including appropriations for claims
36 payments by local member units¹.

37 (cf: P.L.1992, c.89, s.6)

38 ¹[18.] 17.¹ Section 4 of P.L.1976, c.68 (C.40A:4-45.4) is
39 amended to read as follows:

40 4. In the preparation of its budget, a county may not increase
41 the county tax levy to be apportioned among its constituent
42 municipalities in excess of 5% or the index rate, whichever is
43 less, of the previous year's county tax levy, subject to the
44 following exceptions:

45 a. The amount of revenue generated by the increase in
46 valuations within the county, based solely on applying the
47 preceding year's county tax rate to the apportionment valuation
48 of new construction or improvements within the county, and such
49 increase shall be levied in direct proportion to said valuation;

50 b. Capital expenditures, including appropriations for current
51 capital expenditures, whether in the capital improvement fund or
52 as a component of a line item elsewhere in the budget, provided
53 that any such current capital expenditures would be otherwise
54 bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

1 c. (1) An increase based upon emergency temporary
2 appropriations made pursuant to N.J.S.40A:4-20 to meet an
3 urgent situation or event which immediately endangers the
4 health, safety or property of the residents of the county, and over
5 which the governing body had no control and for which it could
6 not plan and emergency appropriations made pursuant to
7 N.J.S.40A:4-46. Emergency temporary appropriations and
8 emergency appropriations shall be approved by at least
9 two-thirds of the governing body and by the Director of the
10 Division of Local Government Services, and shall not exceed in
11 the aggregate 3% of the previous year's final current operating
12 appropriations.

13 (2) (Deleted by amendment, P.L.1990, c.89.) The approval
14 procedure in this subsection shall not apply to appropriations
15 adopted for a purpose referred to in subsection d. or f. below;

16 d. All debt service;

17 e. (Deleted by amendment, P.L.1990, c.89.)

18 f. Amounts required to be paid pursuant to (1) any contract
19 with respect to use, service or provision of any project, facility
20 or public improvement for water, sewerage, parking, senior
21 citizen housing or any similar purpose, or payments on account of
22 debt service therefor, between a county and any other county,
23 municipality, school or other district, agency, authority,
24 commission, instrumentality, public corporation, body corporate
25 and politic or political subdivision of this State; and (2) any lease
26 of a facility owned by a county improvement authority when the
27 lease payment represents the proportionate amount necessary to
28 amortize the debt incurred by the authority in providing the
29 facility which is leased, in whole or in part;

30 g. That portion of the county tax levy which represents
31 funding to participate in any federal or State aid program and
32 amounts received or to be received from federal, State or other
33 funds in reimbursement for local expenditures. If a county
34 provides matching funds in order to receive the federal or State
35 or other funds, only the amount of the match which is required by
36 law or agreement to be provided by the county shall be excepted;

37 h. (Deleted by amendment, P.L.1987, c.74.)

38 i. (Deleted by amendment, P.L.1990, c.89.)

39 j. (Deleted by amendment, P.L.1990, c.89.)

40 k. (Deleted by amendment, P.L.1990, c.89.)

41 l. Amounts expended to meet the standards established
42 pursuant to the "New Jersey Public Employees' Occupational
43 Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

44 m. (Deleted by amendment, P.L.1990, c.89.)

45 n. (Deleted by amendment, P.L.1990, c.89.)

46 o. (Deleted by amendment, P.L.1990, c.89.)

47 p. Extraordinary expenses, approved by the Local Finance
48 Board, required for the implementation of an interlocal services
49 agreement;

50 q. Any expenditure mandated as a result of a natural disaster,
51 civil disturbance or other emergency that is specifically
52 authorized pursuant to a declaration of an emergency by the
53 President of the United States or by the Governor;

54 r. Expenditures for the cost of services mandated by any order

1 of court, by any federal or State statute, or by administrative
2 rule, directive, order, or other legally binding device issued by a
3 State agency which has identified such cost as mandated
4 expenditures on certification to the Local Finance Board by the
5 State agency;

6 s. ¹That portion of the county tax levy which represents
7 funding to a county college in excess of the county tax levy
8 required to fund the county college in local budget year 1992;

9 t.¹ Amounts appropriated for the cost of ¹[providing insurance
10 or self-insurance coverage for the county and its departments,
11 boards, agencies, commissions, officers and employees, for
12 environmental impairment liability, including defense costs]
13 administering a joint insurance fund established pursuant to
14 subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), but
15 not including appropriations for claims payments by local member
16 units¹.

17 (cf: P.L.1993, c.76, s.1)

18 ¹18. N.J.S.40A:2-22 is amended to read as follows:

19 40A:2-22. The governing body of the local unit shall determine
20 the period of usefulness of any purpose according to its
21 reasonable life computed from the date of the bonds, which
22 period shall not be greater than the following:

23 a. Buildings and structures.

24 1. Bridges, including retaining walls and approaches, or
25 permanent structures of brick, stone, concrete or metal, or
26 similar durable construction, 30 years.

27 2. Buildings, including the original furnishings and equipment
28 therefor:

29 Class A: A building, of which all walls, floors, partitions, stairs
30 and roof are wholly of incombustible material, except the window
31 frames, doors, top flooring and wooden handrails on the stairs, 40
32 years;

33 Class B: A building, the outer walls of which are wholly of
34 incombustible material, except the window frames and doors, 30
35 years;

36 Class C: A building which does not meet the requirements of
37 Class A or Class B, 20 years.

38 3. Buildings or structures acquired substantially reconstructed
39 or additions thereto, one-half the period fixed in this subsection
40 for such buildings or structures.

41 4. Additional furnishings, five years.

42 b. Marine improvements.

43 1. Harbor improvements, docks or marine terminals, 40 years.

44 2. Dikes, bulkheads, jetties or similar devices of stone,
45 concrete or metal, 15 years; of wood or partly of wood, 10 years.

46 c. Additional equipment and machinery.

47 1. Additional or replacement equipment and machinery, 15
48 years.

49 2. Voting machines, 15 years.

50 d. Real property.

51 1. Acquisition for any public purpose of lands or riparian
52 rights, or both, and the original dredging, grading, draining or
53 planting thereof, 40 years.

54 2. Improvement of airport, cemetery, golf course, park,

1 playground, 15 years.

2 3. Stadia of concrete or other incombustible materials, 20
3 years.

4 e. Streets or thoroughfares.

5 1. Elimination of grade crossings, 35 years.

6 2. Streets or roads:

7 Class A: Rigid pavement. A pavement of not less than eight
8 inches of cement concrete or a six-inch cement concrete base
9 with not less than three-inch bituminous concrete surface course,
10 or equivalent wearing surface, 20 years.

11 Flexible pavement. A pavement not less than 10 inches in
12 depth consisting of five-inch macadam base, three-inch modified
13 penetration macadam and three-inch bituminous concrete surface
14 course or other pavements of equivalent strength, in accordance
15 with the findings of the American Association of State Highway
16 Officials (AASHO) Road Test, 20 years.

17 Class B: Mixed surface-treated road. An eight-inch surface of
18 gravel, stone or other selected material under partial control
19 mixed with cement or lime and fly ash, six inches in compacted
20 thickness with bituminous surface treatment and cover, 10 years.

21 Bituminous penetration road. A five-inch gravel or stone base
22 course and a three-inch course bound with a bituminous or
23 equivalent binder, 10 years. Class C: Mixed bituminous road.
24 An eight-inch surface of gravel, stone, or other selected material
25 under partial control mixed with bituminous material one inch or
26 more in compacted thickness, five years.

27 Penetration macadam road. A road of sand, gravel or
28 water-bound macadam, or surfacing with penetration macadam,
29 five years.

30 3. Sidewalks, curbs and gutters of stone, concrete or brick, 10
31 years.

32 The period of usefulness in this subsection shall apply to
33 construction and reconstruction of streets and thoroughfares.

34 f. Utilities and municipal systems.

35 1. Sewerage system, whether sanitary or storm water, water
36 supply or distribution system, 40 years.

37 2. Electric light, power or gas systems, garbage, refuse or
38 ashes incinerator or disposal plant, 25 years.

39 3. Communication and signal systems, 10 years.

40 4. House connections to publicly-owned gas, water or
41 sewerage systems from the service main in the street to the curb
42 or property lines where not part of original installation, five
43 years.

44 g. Vehicles and apparatus.

45 1. Fire engines, apparatus and equipment, when purchased
46 new, but not fire equipment purchased separately, 10 years.

47 2. Automotive vehicles, including original apparatus and
48 equipment (other than passenger cars and stationwagons), when
49 purchased new, five years.

50 3. Major repairs, reconditioning or overhaul of fire engines and
51 apparatus, which may reasonably be expected to extend for at
52 least five years the period of usefulness thereof, five years.

53 h. The closure of a sanitary landfill facility utilized, owned or
54 operated by a county or municipality, 15 years; provided that the

1 closure has been approved by the Board of Public Utilities and the
2 Department of Environmental Protection. For the purposes of
3 this subsection "closure" means all activities associated with the
4 design, purchase or construction of all measures required by the
5 Department of Environmental Protection, pursuant to law, in
6 order to prevent, minimize or monitor pollution or health hazards
7 resulting from sanitary landfill facilities subsequent to the
8 termination of operations at any portion thereof, including, but
9 not necessarily limited to, the costs of the placement of earthen
10 or vegetative cover, and the installation of methane gas vents or
11 monitors and leachate monitoring wells or collection systems at
12 the site of any sanitary landfill facility.

13 i. Any purpose, except vehicles, not included in the foregoing,
14 for which obligations may be issued, 15 years.

15 j. The prefunding of a claims account for environmental
16 liability claims by an environmental impairment liability
17 insurance pool pursuant to P.L. _____, c. _____ (C. _____) (pending
18 before the Legislature as this bill), 20 years.¹

19 (cf: P.L.1985, c.153, s.2)

20 19. This act shall take effect ¹[immediately] 120 days next
21 following enactment¹.

22

23

24

25

26 Permits creation of local unit joint insurance funds solely for
27 environmental impairment liability and allows the issuance of
28 bonds.

- 1 i. (Deleted by amendment, P.L.1990, c.89.)
2 j. (Deleted by amendment, P.L.1990, c.89.)
3 k. (Deleted by amendment, P.L.1990, c.89.)
4 l. Amounts expended to meet the standards established
5 pursuant to the "New Jersey Public Employees' Occupational
6 Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);
7 m. (Deleted by amendment, P.L.1990, c.89.)
8 n. (Deleted by amendment, P.L.1990, c.89.)
9 o. (Deleted by amendment, P.L.1990, c.89.)
10 p. Extraordinary expenses, approved by the Local Finance
11 Board, required for the implementation of an interlocal services
12 agreement;
13 q. Any expenditure mandated as a result of a natural disaster,
14 civil disturbance or other emergency that is specifically
15 authorized pursuant to a declaration of an emergency by the
16 President of the United States or by the Governor;
17 r. Expenditures for the cost of services mandated by any order
18 of court, by any federal or State statute, or by administrative
19 rule, directive, order, or other legally binding device issued by a
20 State agency which has identified such cost as mandated
21 expenditures on certification to the Local Finance Board by the
22 State agency;
23 s. That portion of the county tax levy which represents funding
24 to a county college in excess of the county tax levy required to
25 fund the county college in local budget year 1992.
26 t. Amounts appropriated for the cost of providing insurance or
27 self-insurance coverage for the county and its departments,
28 boards, agencies, commissions, officers and employees, for
29 environmental impairment liability, including defense costs.
30 (cf: P.L.1993, c.76, s.3)
31 19. This act shall take effect immediately.
32
33

34 STATEMENT

35
36 This bill provides for the establishment of joint insurance funds
37 by local units (counties and municipalities) for the sole purpose of
38 insuring against claims arising from environmental impairment
39 liability. Under the bill, these environmental joint insurance
40 funds, which must be approved in the same way as other joint
41 insurance funds, may raise funds through the issuance of bonds
42 and other obligations, such as letters of credit. Funds may be
43 raised to establish an environmental impairment liability pool or
44 for the purpose of funding or refunding a bond or other
45 indebtedness. The bill also excludes the cost of insurance or
46 self-insurance for environmental impairment liability from the
47 municipal and county caps.
48 In addition, the bill makes various changes concerning joint
49 insurance funds by: allowing bylaws to provide that each
50 commissioner's vote is proportional to the current assessment of
51 his local unit; providing that commissioners may invest the funds
52 in investments approved for investment by the State Investment
53 Council; and allowing joint insurance funds to use insurance
54 producers.

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2603

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 3, 1993

The Assembly Local Government Committee favorably reports Assembly Bill No. 2603, with committee amendments.

Assembly Bill No. 2603, as amended by the committee, provides for the establishment of joint insurance funds by local units (counties and municipalities) for the sole purpose of insuring against claims arising from environmental impairment liability. Under the bill, these environmental joint insurance funds, which must be approved in the same way as other joint insurance funds, may raise funds through the issuance of bonds and other obligations, such as letters of credit. Funds may be raised to establish an environmental impairment liability pool or for the purpose of funding or refunding a bond or other indebtedness related to environmental impairment liability insurance. The bill also excludes the cost of administering a joint insurance fund established pursuant to this bill from municipal and county cap limits.

In addition, the bill makes various changes concerning joint insurance funds by allowing bylaws to provide that each commissioner's vote is proportional to the current assessment of his local unit and allowing joint insurance funds to use insurance producers.

The committee amended the bill to:

(1) provide that bonds shall be sold by a joint insurance fund pursuant to the "Local Bond Law," N.J.S.40A:2-1 et seq., but shall not be subject to the debt limitation established thereunder;

(2) require that the commissioner's approval of the bylaws and plan of risk management pursuant to N.J.S.40A:10-41, rather than the ordinance or resolution creating the joint insurance fund, be filed with the Secretary of State, the Director of the Division of Local Government Services and the Commissioner of Insurance;

(3) limit the provisions authorizing funding or refunding of bonds or other indebtedness to environmental impairment liability insurance;

(4) provide that debt issued by a joint insurance fund shall be subject to the oversight provisions of sections 40A:5A-6, 7 and 8 of the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.);

(5) stipulate that bonds issued by the authority shall mature not later than 20, rather than 40, years from the date on the bond;

(6) require a joint insurance fund to file a copy of any bond resolution it issues for public inspection. As the bill was introduced, this filing was discretionary on the part of the fund;

(7) remove section 15, which broadened the discretion of joint insurance funds with regard to the investment of their funds;

(8) require the prior review of the Commissioner of Insurance of producer contracts for the performance of risk assessment or risk management;

(9) provide in section 12 of the bill that nothing in the bill shall be construed to alter or impair the power of the commissioner to suspend or terminate the authority of any joint insurance fund created pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:14-36) or to assume control of the insurance fund as provided under section 9 of P.L.1983, c.372 (40A:10-44) in order to enable a fund to meet its obligations, cover its expected losses or to liquidate, rehabilitate or otherwise modify its affairs;

(10) clarify that the costs of administering a joint insurance fund established under subsection b. of section 13 of the bill shall be exempt from the county and municipal cap. As introduced, the cost of providing insurance or self-insurance coverage for any county or municipal entity for environmental impairment liability, including defense costs, were cap-exempt;

(11) amend the "Local Bond Law" to allow for bonds of up to 20 years to prefund a claim for environmental impairment liability; and

(12) change the effective date so that the bill shall take effect 120 days following enactment, rather than immediately.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

[SECOND REPRINT]

ASSEMBLY, No. 2603

STATE OF NEW JERSEY

DATED: JUNE 21, 1993

The Senate Community Affairs Committee reports favorably Assembly Bill No. 2603 (2R).

Assembly Bill No. 2603 (2R) provides for the establishment of joint insurance funds by local units (counties and municipalities) for the sole purpose of insuring against claims arising from environmental impairment liability. Under the bill, these environmental joint insurance funds, which must be approved in the same way as other joint insurance funds, may raise funds through the issuance of bonds and other obligations, such as letters of credit. Funds may be raised to establish an environmental impairment liability pool or for the purpose of funding or refunding a bond or other indebtedness related to environmental impairment liability insurance. The bill also excludes the cost of administering a joint insurance fund established pursuant to this bill from municipal and county cap limits.

In addition, the bill makes various changes concerning joint insurance funds by allowing bylaws to provide that each commissioner's vote is proportional to the current assessment of his local unit and allowing joint insurance funds to use insurance producers.