

RESOLUTION NO. 1987- 175

RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY ARIZONA REPEALING RESOLUTIONS NOS. 1976-96, 1976-118, 1978-91A, 1979-100, 1980-56 AND 1984-137, AND PROVIDING FOR A COMPREHENSIVE RISK MANAGEMENT PROGRAM AND ESTABLISHMENT AND ADMINISTRATION OF A SELF-INSURANCE TRUST FUND WHICH PROVIDES FOR INDEMNIFICATION OF COUNTY OFFICERS AND EMPLOYEES FROM AND AGAINST CERTAIN CLAIMS AND LIABILITIES INCLUDING MEDICAL MALPRACTICE CLAIMS FILED AGAINST PIMA COUNTY, SELF-INSURANCE FOR MEDICAL AND DENTAL EMPLOYEES BENEFITS, SELF-INSURANCE FOR WORKERS' COMPENSATION AND SELF-INSURANCE FOR UNEMPLOYMENT COMPENSATION.

WHEREAS, Pima County, Arizona, a body politic and corporate, is a growing political subdivision of the State of Arizona with a wide assortment of governmental and proprietary responsibilities and obligations; and

WHEREAS, it is in the best interest of the citizens of the County to have a centralized and comprehensive policy statement regarding risk management; and

~~WHEREAS, the County has initiated a risk management program that administers a Self-Insurance Trust (SIT) Fund; and~~

WHEREAS, pursuant to A.R.S. §§11-261 and 11-981 the County is authorized to establish a self-insurance program for the management and administration of a system for direct payment of benefits, losses or claims or any combination of insurance and direct payments, including risk management consultation, to

provide health, accident, life or disability benefits for employees and officers of the County and their dependents, and payment of any property loss sustained or lawful claim of liability or fortuitous loss made against the County or its employees or officers if such employees or officers are acting within the scope of employment or authority; and

WHEREAS, pursuant to A.R.S. §11-981 the County is required to establish a trust fund to provide for the payment of certain benefits, claims or losses which arise as a result of the self-insurance program; and

WHEREAS, it is in the best interest of the County to have a clear statement of policy with regard to liability and indemnification of its officers and employees, including those engaged in the delivery of hospital, medical and health care services; and

WHEREAS, Pima County has determined to add medical and dental employee benefits to the Self-Insurance Trust Fund; and

WHEREAS, the Industrial Commission of Arizona has granted ~~permission to Pima County to be self-insured for Workers' Compensation to County employees; and~~

WHEREAS, the Arizona Department of Economic Security has granted permission to Pima County to be self-insured for Unemployment Compensation; and

WHEREAS, it is in the best interest of the citizens of Pima County to enact this Resolution;

THEREFORE, BE IT RESOLVED by the Board of Supervisors of Pima County:

I. GENERAL RISK MANAGEMENT POLICIES AND OBJECTIVES

Section 1. Objectives. The objectives of the Pima County Risk Management Program are to protect and conserve Pima County's human, financial and physical assets while providing continuity of mandated services and maintaining fiscal integrity. In order to accomplish these objectives, Pima County shall:

1. Invest in long term risk reduction through a comprehensive program designed to lessen its exposures to loss.
2. Provide, through appropriate risk financing techniques, the funding necessary to pay for losses incurred without disruption to Pima County's budget.
3. By application of risk control and risk financing techniques, minimize the total net cost of the program to Pima County.

The Risk Management policy of the Board of Supervisors (Board) is established and implemented with the above objectives in mind.

Section 2. Risk Management Policy.

Pima County is to be protected against fortuitous loss or losses which, in the aggregate during any financial period, would significantly affect the ability of the Board of Supervisors to fulfill its responsibilities to its taxpayers and the public. In no event shall loss of life, major personal injury to employees

or members of the public, or damage to property attributable to County activities be acceptable to the Board of Supervisors.

Pima County shall apply the Risk Management process to risks of loss. This process includes a systematic and continuous identification of loss exposure, the analysis of these exposures in terms of frequency and severity probabilities, the application of sound risk control procedures, and the financing of risks consistent with Pima County's financial resources.

In recognition of its financial resources and the geographical dispersion of its physical assets, Pima County shall accept retention of uninsured losses up to the limits deemed to be prudent by the Board, in consultation with staff.

Section 3. Authority of the County Manager to carry out Risk Management Policy.

The County Manager is hereby authorized to establish and maintain Pima County's Risk Management Program. The County Manager is authorized to take all reasonable steps necessary and appropriate in administering the Risk Management Program which includes: ~~(1) self-insurance for tort liability arising out of acts and omissions of County officers, agents and employees acting within the scope of their employment or authority,~~ (2) self-insurance for medical malpractice liability, (3) self-insurance for medical and dental employee benefits, (4) self-insurance for Pima County's Workers' Compensation statutory

obligations and (5) self-insurance for Pima County's Unemployment Compensation statutory obligations.

Section 4. Risk Management Manual.

The Risk Manager shall establish and distribute a Risk Management Manual. All elected officials, department directors, administrators and managers are required to familiarize themselves with the Risk Management Manual and to follow the directives contained therein.

II. ESTABLISHMENT AND MAINTENANCE OF THE SELF-INSURANCE TRUST FUND.

Section 1. Establishment of Self-Insurance Trust Fund.

There is herein established, in accordance with A.R.S. §11-981, the Pima County Self-Insurance Trust Fund. The County Manager is herein directed to segregate all funds previously and hereinafter budgeted for Trust Fund purposes as described below and to maintain the Trust Fund separate and apart from the County General Fund.

Section 2. Purpose. The purpose of the Trust Fund is to provide for the payment of administrative costs, legal defense costs, claims adjusting costs, losses, reserves for anticipated losses and lawsuits, insurance costs including premiums, external audit and other expenses related to the operation of Pima County's Self-Insurance Trust Fund. Each year, the Board, upon recommendation from the County Manager, shall determine the amount deemed appropriate for these purposes.

Section 3. Inclusion of the Pima County Medical Plan and the Pima County Dental Plan in the Self-Insurance Trust Fund.

The Self-Insurance Trust Fund is hereby expanded to include a separate trust account for the purpose of retaining and safeguarding the funds of the Pima County Medical Plan. The Self-Insurance Trust Fund is further expanded to include a separate trust account for the purpose of retaining and safeguarding the funds of the Pima County Dental Plan. The purpose of the separate trust fund accounts is to provide for the payment of claims, administrative expenses, claims adjusting costs, insurance costs including premiums and other expenses related to the insurance coverage to be provided to Pima County employees pursuant to the Pima County Medical Plan and the Pima County Dental Plan. All funds received by Pima County in respect to either the Pima County Medical Plan or the Pima County Dental Plan shall be segregated from the County general fund and segregated from all other trust fund accounts within the Self-Insurance Trust Fund.

Section 4. Designation of Risk Management Consultant or Insurance Administrator.

Pursuant to A.R.S. §11-981(B)(1), the Board shall designate a licensed risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Articles 3 or 9. Such license shall be verified by the Board at the time of said designation.

Section 5. Administration of Trust.

A. Trustees. The Trust shall be administered by seven joint trustees who shall serve in an advisory capacity at the sole pleasure of the Board. The Board shall appoint these seven trustees, of whom no more than one may be a member of the Board, and no more than one other may be an employee of the County. A majority of the trustees shall constitute a quorum for the purpose of conducting business.

B. Duties. The trustees shall meet at least once a year and shall make recommendations thereafter to the Board through the County Manager, regarding the administration of the trust. The trustees shall submit an annual report to the Board through the County Manager relating to the status of the trust fund and make other recommendations that the trustees deem necessary and appropriate. The Risk Manager shall coordinate the activities of the trustees and assist in the facilitation and administration of the Trust Fund in whatever manner appropriate and necessary.

C. Bonding Requirements. The trustees shall be bonded ~~in the same manner and procedure as County officers and~~ employees.

D. Stop Loss Provision. Pursuant to the self-insurance provisions of the Pima County Risk Management Program, levels of self-insured retention for each particular type of risk shall be recommended by staff and established and approved by the Board.

E. Annual Audit. An annual audit shall be performed by an external auditor and a copy of the report shall be kept on file in the office of the Clerk of the Pima County Board of Supervisors for a period of not less than five years. The Risk Manager shall coordinate this audit.

F. Expenditures from Trust Fund. There shall be no expenditures from the Trust Fund for any purpose not specified in Title 11, Chapter 7, Article 5, A.R.S. §11-981.

Section 6. Trust Fund not subject to Budget Law.

Expenditures during the fiscal year from the Trust Fund and money in the Trust Fund at the close of the fiscal year shall not be subject to the provisions of Title 42, Chapter 2, Article 4 (A.R.S. §42-301 et. seq.)

Section 7. Lapse of Trust Fund. In the event that the Trust Fund is no longer used by the County for the purposes stated herein and in A.R.S. §11-981, the fund shall revert during that fiscal year to the General Fund and account.

Section 8. Payment of Benefits, Losses and Claims.

~~Pima County has established and hereby ratifies a program~~ which combines the purchase of insurance and self-insurance to deal with the various benefits, losses and claims involving the County. This program includes the provision of:

A. Payment of any lawful fortuitous claim of tort liability, including medical malpractice liability, made against the County, its officers or employees, providing such officers or

employees are acting within the scope of their employment or authority.

B. Pima County Medical and Dental Plans.

C. Workers' Compensation Benefits, pursuant to A.R.S. §23-961, et. seq.

D. Unemployment Compensation Benefits pursuant to A.R.S. §23-601, et. seq.

Section 9. Administration of Claims within the Self-Insurance Trust Fund. With regard to any tort liability claim which is within the retention limits established by the County, the responsibility for administering and adjusting these claims shall be with the Pima County Risk Management Division and the Tort Litigation Unit of the Pima County Attorney's Office. The Tort Litigation Unit is hereby authorized to provide legal defense by retainer or otherwise. The adjustment and settlement of any claim under \$1,000.00 shall require the approval of the Risk Manager. The settlement of claims between \$1,000.00 and \$10,000.00 shall require the approval of the Tort Litigation Unit, County Attorney's Office. The settlement of any claim over \$10,000.00 and up to \$25,000.00 shall require the approval of the County Manager. The settlement of any claim \$25,000.00 and over requires approval of the Board. The Board shall be supplied with an annual report which shall include the number and amount of all loss claims and liability payments which were made during the

fiscal year. Quarterly reports shall be submitted to the County Manager.

Section 10. No expansion of Liabilities.

Nothing in this Resolution shall be construed to create liability on the part of the County where such liability does not exist in the absence of this Resolution. This shall include any alleged liability which derives from the indemnification of employees as described in Part III of this resolution.

III. INDEMNIFICATION OF OFFICERS AND EMPLOYEES.

Section 1. Indemnification. Pima County will defend, hold harmless, and indemnify any officer or employee of the County from and against any and all claims and civil liability for alleged acts, errors, and omissions of any nature occurring while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization by the County. Pima County may fulfill these obligations by insurance, by a program of self-insurance, or by a combination of said methods.

~~Section 2. Exclusions. The following exclusions shall apply to the indemnification and other benefits provided above:~~

A. Claims or losses which are attributable to officers or employees working for non-County employers, even when so authorized under Pima County Merit System Rules and personnel policies, except:

1. Law enforcement officers who while so employed or while in any "off duty status" take police action in accordance with departmental rules and policies.

2. The exception of subparagraph 1 above shall be applicable only when said law enforcement officer has protected himself and the County by use of a form attached as Exhibit A.

B. Claims or losses that contain allegations of felonious acts or conduct mandate that the County shall defend the officer or employee under a reservation of rights. The County reserves the right to withdraw coverage for defense or indemnification of the employee if a competent court determines the act or omission to be a felony.

Section 3. Officer and Employee Defined. For the purpose of indemnification and other benefits provided by this Resolution, each of the following will herein be treated as an "officer or employee of the County":

A. Any officer, employee, or agent of the County and any authorized volunteer working under the direction of an officer, employee, or agent of the County.

B. Any member of the board or commissions of the County.

C. The spouse of the above-named individuals where a claim is made on the spouse for an incident arising solely out of the action of the named officer or employee.

No person shall be entitled to indemnification or other benefits under the Resolution if that person has a contractual

relationship with the County which specifically provides otherwise, or which provides that the person will indemnify, defend, hold harmless and/or insure the County against such liability.

Section 4. Effective Date. The indemnification and other benefits provided by this Resolution are applicable to claims and liability arising from occurrences on or after the 28th day of September, 1978.

Section 5. Duties of Persons Claiming Benefits Under This Resolution. The County shall have no duty to defend, save harmless, or indemnify any persons unless and until the person claiming benefits performs the following duties:

A. In the event of an occurrence which may reasonably be expected to give rise to liability or a claim of liability, written notice containing the particulars shall be forwarded to the Tort Litigation Unit of the County Attorney's Office on a form provided by the County Attorney. The notification shall contain the identity of the employee or other party claiming benefits and all reasonably obtainable information with respect to the time, place and circumstances of the occurrence. It shall include, if available, the name, address, and telephone number of any person who may claim injury, and the names, addresses and telephone numbers of all potential witnesses. Such communication shall be confidential, within the purview of the attorney/client privilege. Such written notification shall be delivered to the County attorney within three working days. Any occurrence

involving death or bodily injury to a third party shall be reported immediately by telephone to the Tort Litigation Unit of the County Attorney's Office.

B. If claim is made or suit is brought against an employee or other party claiming benefits hereunder, the person shall immediately forward to the Tort Litigation Unit of the County Attorney's Office every demand, notice, summons or other process received by that person or his/her representative. The party shall also inform the appropriate department director. Failure to give timely notice shall relieve the County of any liability pursuant to this Resolution.

C. Any employee or other party claiming benefits hereunder shall cooperate with the County by assisting, upon request of the County, in making settlements, in the conduct of suits, and in enforcing any right of defense, contribution or indemnity which may be owing to said employee by any third person or organization. The employee or other party claiming rights hereunder shall not make any written or oral statements or agreements ~~before or after an occurrence which would prejudice his/her or~~ the County's right to defense, contribution or indemnification by a third person or organization, or which would prejudice the County's right of subrogation.

D. The employee or other party claiming benefits hereunder shall attend meetings, hearings and trials and assist in the securing and giving of evidence and obtaining the attendance of

witnesses. The employee shall not, except at his/her own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid at the time of occurrence.

Section 6. Subrogation. In the event the County makes any payment or incurs any expense on behalf of any party claiming benefits hereunder, the County shall be subrogated to that party's rights of recovery therefor against any third person or organization. Each party claiming benefits hereunder shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights to him/herself and the County. Each party shall do nothing to prejudice such rights.

Section 7. Actions by Those Claiming Benefits Hereunder. No action shall lie against the County in relying upon this Resolution. Furthermore, no action shall lie against the County in relying upon this Resolution until the amount of the parties' obligation to pay shall have been finally determined either by judgment against the person claiming benefits hereunder after actual trial and appeal, or by written agreement of the following: ~~the person claiming benefits hereunder, the claimant,~~ and the County.

Section 8. Assignment. Through this Resolution, Pima County incurs certain obligations to its officers and employees and grants them certain rights. These rights are not assignable, and no right or cause of action is hereby granted to any person other than officers and employees of the County as defined above.

Any attempt by an employee to assign or otherwise transfer rights pursuant to this Resolution shall operate to cancel and render null and void such rights.

Section 9. Protection under this Resolution will be excess. Any protection which is afforded under this Resolution, shall be excess over and above any valid and collectible insurance. It is the intention of this Resolution that the protection provided herein shall be secondary and effective only if there is no insurance or other indemnification covering an alleged claim.

Section 10. Limitation of Liability. Nothing in this Resolution shall:

1. Impose any liability on the County or the departments, agencies, boards and commissions or any officers, agents or employees of the County unless such liability otherwise exists.

2. Impair any defense the County or the departments, agencies, boards and commissions or any officers, agents or employees of the County otherwise may have.

Section 11. Distribution of Claim Documents. The Clerk of the Board of Supervisors and any other County Department, officer, or employee who receives claim forms, complaints, legal process, or other documents relating to liability claims against the County, shall forward copies of the claims to the Tort Litigation Unit of the County Attorney's Office, the Risk Manager, and other parties who normally receive such communications within the normal course of business.

IV. RESERVATION OF A RIGHT TO AMEND. The Board specifically reserves the right to alter, amend, or repeal this Resolution.

V. REPEAL OF PREVIOUS RESOLUTIONS. This resolution repeals Resolution Nos. 1976-96, 1976-118, 1978-91A, 1979-100, 1980-56 and 1984-137.

PASSED AND ADOPTED this 15th day of September, 1987.

PIMA COUNTY BOARD OF SUPERVISORS

By: Sam Luna

ATTEST:

Jane S. Williams
Clerk of the Pima County
Board of Supervisors

APPROVED AS TO FORM:

Mark W. Decker
Civil Deputy County Attorney

APPROVED AS TO CONTENT:

James E. Reilly
County Manager