

## News Memo

TO: Concerned parties/NH News Media  
FROM: The Local Government Center  
RE: Status of Secretary of State Reviews  
Date: August 2, 2011

---

The 2010 legislative session included a provision (HB 1393) requiring that the Secretary of State update legislative leaders on the status of investigations associated with any public risk pools every six months. The first report under the new law was issued in late October 2010; on August 2, 2011 the Bureau of Securities Regulation (BSR) issued a *Report on Local Government Center*.

Local Government Center (LGC) has fulfilled all requests for documents and has spent the past several months providing a great deal of information to the Secretary of State's Bureau of Securities Regulation (BSR) office. In addition, legal counsel for LGC has met with the staff of the BSR on at least a half a dozen occasions in 2011 in an effort to reach either a partial or complete settlement of the issues at hand. Unfortunately, those settlement discussions did not lead to any agreed upon resolution. Nevertheless the LGC remains open to finding a positive resolution to matters under review by the Secretary of State's office.

In order to provide focus on the issues associated with the investigation, the LGC has written an informational booklet—*LGC: Facts & Myths*—that addresses some of the more complex matters associated with the review. The publication can be found at:

[http://www.nhlgc.org/attachments/aboutlgc/newsroom/2011\\_Fact&Myths\\_Booklet.pdf](http://www.nhlgc.org/attachments/aboutlgc/newsroom/2011_Fact&Myths_Booklet.pdf)

### **Additional Background**

1. **Reviews:** There are at least two separate reviews being considered by the BSR dealing with RSA 5-B public risk pools. First is a complaint filed against the LGC in 2009, a copy of which has not been provided to the LGC that resulted in this two-year investigation by the BSR. The second is a review of the limitation of reserves for all public pooled risk management programs.
  - a. **Regarding the complaint and next steps:** The BSR has the option, following the investigation, to issue an order for corrective action only after “notice and hearing” which then provides LGC the opportunity for a hearing on whether any violations, in fact, occurred. Should this happen, the hearing will offer LGC the best opportunity to see the actual complaint and respond to the report. This course of action will likely take some time, as the law governing the Bureau of Securities procedures requires due process. This hearing is conducted internally at the Secretary of State's office and could lead to a decision to vacate or uphold any order issued by the BSR. Orders from BSR hearings are appealable to the NH Supreme Court.

- b. Following a detailed review of the August 2, 2011 *Report*, the LGC will issue its response to balance the report's findings.

## 2. Regarding the review of reserves:

HB 1393 (enacted in June of 2010) states:

*The secretary of state, shall, no later than January 1, 2011 . . . submit a report to the speaker of the house of representatives, the president of the senate, the senate committee and house committee with jurisdiction over matters of commerce, and the governor, containing specific recommendations concerning the limitation of reserves in pooled risk management programs and the limitation on administrative expenses as a percentage of claims of pooled risk management programs.*

The Secretary of State filed an incomplete, preliminary report in December 2010 that addressed only LGC's HealthTrust program, not the broader legislative charge of recommending reserve level standards to all RSA 5-B risk pools as required by the law. The August 2, 2011 *Report* is limited to only one LGC line of coverage in one of three RSA 5-B Pools. In addition, the language of HB 1393 suggests that any limitations to reserve level requirements would require legislative action following recommendations to the Legislature from the Secretary of State.

### **Major Issues in the Controversy**

The leading issues in contention in the August 2, 2011 *Report* appears to be the following: (Attached to the memo are documents associated with the details of these topics):

1. **LGC corporate structures:** Here two major topics arise: technical application of dated and complex structures surrounding the restructuring of the organization around a new LLC and the mechanics of LGC's Board of Directors. The report on these matters is incomplete and offers no specific remedy. LGC understands the necessity to correct any open issues and believes such a resolution can be found.
2. **Reserves and surplus:** A third party actuary was asked by LGC to review the various methods for setting reserves for LGC HealthTrust. A copy of the actuary's report, which indicates that the LGC's reserve method is appropriate and conservative, was completed in the spring of 2011 and submitted to the Secretary of State's office. In reaction to that work, the August 2, 2011 *Report* acknowledges that more than one method is acceptable, and suggests a low cost, high-risk method should be adopted. However, it seems clear from HB 1393 that if any method were to be prescribed to RSA 5-B Pools in New Hampshire, it would require legislation. LGC disagrees with the BSR on this matter. The Legislature must balance prescriptive requirements with local control and management.
3. **Funding of the workers' compensation program or the 1% issue:** LGC's Board acted with prudent business judgment and in a manner permitted by the law, and in reliance on the advice of independent law firms. While LGC believes that its decision was entirely appropriate, on June

2, 2011, the Board of Directors of the Local Government Center adopted a resolution to repay funds used to support the Workers' Compensation pool to LGC's HealthTrust, in the form of a promissory note. A [news release](#) and [copy of the resolution](#) are attached. This action will likely satisfy any concerns raised in the report on this matter.

4. **NH Municipal Association membership requirements:** The report wrongly suggests that it is either unlawful or inappropriate to require those participating in the LGC HealthTrust or Property-Liability Trust to be members of the New Hampshire Municipal Association. The legislative history of the adoption of the law shows that the required membership criteria existed and was known to the lawmakers when they allowed risk pools to set eligibility criteria.

### **Concern About Financial Claims**

The summary of the report and "demand" offers a rather vague and completely unsupported list of what appears to be estimates that account for \$60 million in adjustments and \$27 million in accounting changes. Specifically, the report calls for \$40 million in surplus to be "returned"—which will require legislation. Furthermore, those dollars would ultimately come from rate increases to cities and towns.

### **Conclusion**

The LGC takes very seriously its responsibility to provide low risk, affordable health, property-liability, and workers' compensation coverage to its members. We have cooperated fully with the BSR and are prepared to move into the next stages of this process. However, LGC is disappointed that the August 2, 2011 *Report* lacks sufficient detail, makes errors of fact and has an accusatory rather than a regulatory tone. We are also concerned that the *Report* disregards the consequence to taxpayers, to covered lives, and to the cities, towns and school districts whose rates, coverage and risk profiles would be dramatically altered by the BSR demands.

The next steps in this process will likely come in the form of a legal/regulatory hearing process, and perhaps legislative action. We look forward to this more open and informative stage.

We trust that both LGC and the BSR share the goal of protecting those who are covered by RSA 5-B risk pools in New Hampshire and to do so in a fair and open set of processes.