THE ORIGIN OF THE PEPL FUND IN SOUTH DAKOTA

The mid-1980's witnessed an increasingly expensive commercial insurance market for public entities seeking tort liability coverage.

In response, the South Dakota State Legislature passes what is known as the "PEPL Law," SDCL Chapter 3-22, in 1986. That law allows certain public entities to pool contributions to provide tort liability coverage.

Subsequently, the Public Entity Pool for Liability (PEPL Fund) was activated on July 1, 1988, to provide tort liability coverage for employees of the state of South Dakota. The State Risk Manager is appointed the PEPL Fund Executive Director.

EXPLANATION OF COVERAGE

Sovereign Immunity

Sovereign immunity according to Barron's Law Dictionary is "a doctrine precluding the institution of a suit against the sovereign [government] without the sovereign's consent." Public entities in the United States enjoyed this immunity from lawsuit, until judicial decisions in the last 40 years began limiting its application.

State Employee Liability Exposure

South Dakota law provides that sovereign immunity is waived to the extent that coverage is provided either through the purchase of insurance or an arrangement such as the State has with the PEPL Fund. Therefore, the "Agreement" and "Memorandum of Coverage" between the State and PEPL carve out the instances where the State waives sovereign immunity and agrees to cover damages for which an employee becomes liable.

Initially, the PEPL Fund excluded coverage to state employees sued for economic damages resulting from their errors or omissions. However, on August 16, 1995, the South Dakota Supreme Court ruled state employees have no immunity for damages resulting from ministerial acts. Ministerial acts are defined by the South Dakota State Supreme Court as "that which involves obedience to instructions, but demands no special discretion, judgment or skill," such as driving a vehicle. In response to this further erosion of the state's sovereign immunity, the PEPL Fund coverage document was amended to cover non-economic damages resulting from ministerial acts.

Coverage and Limit of Liability

PEPL provides State employees with a $1,000,000 per occurrence coverage limit for general liability, public officials errors and omissions liability, automobile liability, law enforcement liability, and some medical malpractice liability. Details of the coverage are provided in a formal "Agreement" and "Memorandum of Coverage" between the State and PEPL. (See pages 2-6 through 2-18 of this Manual.)

A state employee is defined as all current and former employees and elected officers of the state whether classified, unclassified, licensed or certified, permanent or temporary, whether compensated or not. The term includes employees of all branches of government including the judicial and legislative branches and employees of constitutional, statutory and executive order boards, commissions and officers. The term does not include independent contractors.

Automobile Coverage

Under the PEPL program, coverage is provided for a state employee's liability (up to $1,000,000 per occurrence) to other persons due to the state employee's negligence in operating a state-owned vehicle on state business.

It should be noted that if a state employee is operating their personally-owned vehicle on official state business, their personal automobile liability coverage is primary and PEPL is secondary.

There is no PEPL Fund coverage for:

- Property damage to the state owned vehicle;
- Injuries covered by other insurance;
- Losses which agencies, employees and agents did not cause or were not legally responsible to prevent;
- Actions wrongfully meant to harm someone or actions not related to state employment;
- Personal belongings in vehicles; and
- Reckless disregard for the safety of others.

*State-owned vehicles are exempt from "proof of insurance" laws (SDCL 32-35-124). Therefore, even though liability coverage exists, state-owned vehicles carry no "proof of insurance" cards.

Premiums

Each agency contributes to the PEPL fund annually. Upon receipt of an annual actuarial report, the PEPL Fund Director determines the amount required from the state to maintain a sound fund balance. The amount required for general liability coverage is divided equally between the number of FTE covered by the fund. The amount required for vehicle coverage is divided equally among the number of vehicles in the state fleet.

THE RESPONSIBILITIES OF THE PEPL FUND TO THE STATE OF SOUTH DAKOTA

- Provide tort liability coverage to the employees of the state of South Dakota.

- Manage liability claims to keep losses and costs down: ensuring an adequate reporting procedure, ensuring claims are properly investigated and handled, negotiating settlements advantageous to the state, identifying loss trends and keeping agencies abreast of their losses.

- Manage lawsuits including the selection of the most competent attorneys to represent state employees, the monitoring of lawsuits to ensure efficient and cost-effective litigation, and negotiating settlements advantageous to the state.

- Provide detailed financial statements and budgets for each coverage period.

- Conduct independent audits of claims administration services.

- Conduct independent actuarial studies of loss and contingency reserves.

THE RESPONSIBILITIES OF THE STATE OF SOUTH DAKOTA TO THE PEPL FUND

- Prompt payment of coverage contributions to the PEPL Fund.
- Prompt and proper reporting of accidents, incidents, and unsafe conditions.
- Prompt and proper reporting of claims and lawsuits filed against the state and its employees.
- Cooperation with the PEPL Fund in the settlement and defense of claims and lawsuits.

PARTICIPATION AGREEMENT
BETWEEN
THE PUBLIC ENTITY POOL FOR LIABILITY
AND
THE STATE OF SOUTH DAKOTA

To view the Participation Agreement and the Memorandum of Coverage, return to the manual homepage and click on the link labeled “Participation Agreement and Memorandum of Coverage.”