

FOR IMMEDIATE RELEASE

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**BUREAU OF SECURITIES REGULATION ISSUES REPORT ON
INVESTIGATION OF LOCAL GOVERNMENT CENTER
QUESTIONS COMPLIANCE WITH CORPORATIONS LAW AND
RETURN OF FUNDS TO TOWNS AND CITIES**

CONCORD, NH (October 28, 2010) – The New Hampshire Bureau of Securities Regulation has issued an interim report of its ongoing investigation of the Local Government Center and the insurance pools it operates on behalf of the state’s cities and towns. The report suggests a reorganization that took place in 2003 may have resulted in entities whose legal existence is now questionable. Additionally, the report lends further support to allegations that Local Government Center’s insurance programs may not be returning surplus funds to cities and towns as required under state law.

The Local Government Center currently operates two pooled risk programs that, among other services, provide insurance to cities and towns. The Bureau of Securities Regulation was charged with oversight of these pooled risk programs in 2009. In July 2009, the Bureau received a complaint against Local Government Center’s HealthTrust program . The complaint alleged that HealthTrust has used member funds for purposes unrelated to the provision of health benefits and that surplus money has not been returned to members as required by law. The Local Government Center refused to provide information to the Bureau and sued, alleging the Bureau did not have the authority to investigate. However, a superior court opinion and action by the state legislature supported the Bureau’s authority to investigate pooled risk programs.

While the initial focus of the Bureau’s investigation was the use of funds by Local Government Center and the return of surplus to members, the interim report indicates that Local Government Center’s 2003 reorganization may not have followed the law. In reorganizing, the Local Government Center initiated a series of business formations flowing from New Hampshire to

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Delaware and back to New Hampshire involving the creation of shell companies.

“These activities raise serious issues and have serious repercussions,” said Earle Wingate, Bureau attorney and author of the report. “While we have not yet reached any conclusions about the legal status of the entities created in 2003, these questions must be resolved. The cities and towns of New Hampshire have too much at stake.”

The report notes that the issue of appropriate reserve levels and the return of surplus money to cities and towns remains a major concern. It suggests that Local Government Center may have failed to comply with state law in 2008 when it used 1/3 of a surplus as a credit in its rating formula, but otherwise retained the remaining surplus. The report further states that the 2003 reorganization led to commingling of the various programs’ funds. This commingling made it difficult to determine what appropriate administrative costs were for each program and what should be returned as surplus. In addition, the report highlights various expenses of the pooled risk programs, including a defined benefit pension plan and spending on a range of items from caterers and hotels to entertainment and charitable contributions.

Wingate said this report may provide a basis for discussion and guidance for the legislature in addressing the appropriate oversight of pooled risk programs. The report notes that the Bureau is obtaining actuarial services in order to determine appropriate levels of reserves for pooled risk programs. Under a law passed last summer, the Bureau is required to make recommendations to the state by January 1, 2011 regarding suitable reserve levels.

STATE OF NEW HAMPSHIRE

Department of State

Pooled Risk Management Plans Owned by Local Government Center, Inc.

Interim Report of Investigation Pursuant to RSA 5-B:4-a

This is an overview of an investigation of Local Government Center, Inc. (LGC), a New Hampshire non-profit corporation, operating as the parent company of two Pooled Risk Management Programs (Pools), LGC Healthtrust, LLC, and LGC Property-Liability, LLC. The law governing Pools is set forth in RSA 5-B, Pooled Risk Management Programs. This law authorizes municipalities to band together to form purchase groups for the acquisition of coverage for the insurance risks detailed in RSA 5-B:3, III (a) through (g).

Historically, the former RSA 5-B:4 (eff. 1987) precluded the department of state from exercising any rulemaking, regulatory or enforcement authority over pools. A new iteration of RSA 5-B:4 (at RSA 5-B:4-a, eff. 6-14-10)¹ gives the secretary of state comprehensive investigative and regulatory authority.

This investigation began as a response to receipt by this office of a complaint alleging four matters: 1) that member contributions to the Pooled Risk Management Program Local Government Center HealthTrust, LLC (HealthTrust) were being used to fund issues and programs not health and employee benefits; 2) that member contributions to HealthTrust were being used for things not medically related; 3) that HealthTrust was using member contributions to fund expenses above and beyond those actually incurred in the running of HealthTrust; and 4) that earnings in excess of amounts required for administration, reserves, etc., were not being returned to political subdivisions.

This investigation initially sought to address these concerns. As the review progressed, information was received that the business entities under which the Pools were doing business were allegedly incorrectly formed and governed, and the scope thus expanded. Since the basis for the authority of an entity to have RSA 5-B status (and thus protection against insurance

regulation and taxation), is that it follow the law regarding standards of organization and operation, a review of the corporate governance of the Pools is appropriate.

INITIAL CORPORATE COMPOSITION AND CHANGES

Details of the governance of Pools is delineated in RSA 5-B: 5,I(a) and (b), which requires that each Pool exist as a legal entity organized under New Hampshire law, each to be governed by a board. Historical review shows that at the time of the original enactment of RSA 5-B (1987), two Pools associated with the New Hampshire Municipal Association were created: New Hampshire Municipal Association Health Insurance Trust, Inc. (renamed HealthTrust, Inc. in 2001), and New Hampshire Municipal Association Property Liability Insurance Trust, Inc. (renamed New Hampshire Municipal Association Property Liability Trust, Inc. in 1996). In 2003, New Hampshire Municipal Association “associated corporations” underwent radical change. On 6-26-03, the following occurred:

Local Government Center, Inc. (never a Pool) amended its name to Local Government Center Real Estate, Inc.

New Hampshire Municipal Association, Inc. then amended its name to Local Government Center, Inc.

Four New Hampshire Limited Liability Companies² were formed:

- Local Government Center HealthTrust, LLC
- Local Government Center Property-Liability Trust, LLC
- Local Government Center Worker’s Compensation Trust, LLC
- New Hampshire Municipal Association, LLC

Two Delaware Limited Liability Companies were formed:

- LGC-HT, LLC
- LGC-PLT, LLC

The Delaware Secretary of State's office issues "Certificates of Authentication" which show corporate/business organization status as maintained by Delaware authorities. Delaware allows certain private companies to add information to the State of Delaware Corporations Division computer database directly without review by Delaware Corporations staff. The "Certificates" are issued based on the information in the database and no state employee reviews the source of the information before releasing a Certificate. The private company which added information concerning the NH Pools to the Delaware Corporations database was CT Systems, Inc.

Delaware records show, concerning the New Hampshire Pool HealthTrust, Inc., that a merger occurred between this entity (a New Hampshire non-profit corporation) and the Delaware limited liability company LGC-HT, LLC on 6-26-03, with the Delaware LLC the surviving entity. New Hampshire records then show a merger of the Delaware company LGC-HT, LLC with the New Hampshire limited liability company Local Government Center HealthTrust, LLC, effective three days later on 6-30-03.

The Delaware Certificate of Authentication says that what was merged with the Delaware "LGC HT-LLC" was a "New Hampshire Statutory Trust". This was not correct. The source for this information appears to be a handwritten notation on the "document filing sheet" filed with Delaware Corporations Division, saying there was a merger between LGC-HT, LLC (De) with HeathTrust, Inc (a "NH Business Trust").

Likewise, Delaware records show, concerning New Hampshire Municipal Association Property-Liability Trust, Inc., that a merger occurred between this entity (a New Hampshire non-profit corporation) and the Delaware company LGC-PLT, LLC on 6-26-03, with the Delaware limited liability company the surviving entity. New Hampshire records show a merger of the Delaware company LGC-PLT with the New Hampshire limited liability company, Local Government Center Property-Liability Trust, LLC, effective three days later on 6-30-03.

As to this transaction, the Delaware Certificate of Authentication says that what was merged with the Delaware "LGC PLT-LLC" was also a "New Hampshire Statutory Trust". This again was not correct. The source for this information is unknown, as the handwritten notation on the

“document filing sheet” filed with Delaware Corporations Division in this matter recites that the merged entity is “New Hampshire Municipal Association Property-Liability Trust, Inc (NH)”, clearly a corporation.

When the latter two New Hampshire LLC’s were formed, they did not contain the substance of the Pools held by the earlier New Hampshire entities, HealthTrust, Inc. and New Hampshire Municipal Association Property-Liability Trust, Inc., respectively; they were “shells”. They were without the substance of the Delaware LLC’s from the date of their filing with the NH Corporations Division, 6-27-03, to the effective date the respective Delaware LLC’s merged with them, 6-30-03. Thus, for this period of time these two Pools did not exist as legal entities organized under New Hampshire law, as required by RSA 5-B:5,I(a).

Second, a representative of the private company authorized to enter data into the Delaware Corporations database, CT Systems, Inc., said he did not know the source of the erroneous information as to how HeathTrust came to be called a “NH Business Trust”, or the source of the information concerning Property-Liability Trust, or how Delaware came to call both “Statutory Trusts”, but that the source of all this information was likely the law firm which asked that the merger documents be filed in Delaware.

Third, while Delaware law allows merger of a “statutory trust” with a limited liability company, New Hampshire law does not recognize merger of a New Hampshire non-profit corporation with an LLC. It appears that Delaware law forbids doing in Delaware, what cannot be done in the home state of the merging corporation.

Finally, Local Government Center Workers Compensation Trust, LLC was created as a stand-alone business entity, to provide members with workers compensation coverage. As noted below, this ultimately merged into LGC Property-Liability Trust, LLC.

CORPORATE GOVERNANCE

Prior to the 2003 entity changes, HealthTrust, Inc. and New Hampshire Municipal Association Property-Liability Trust, Inc. were governed by separate boards. In April 2003, at a joint meeting of these boards, as well as the New Hampshire Municipal Association Executive Committee, discussions ensued on making the changes described above. Then, each separate board met independently. Ultimately, the decision of each board was to go to a ‘single organizational model’, with a corporation operating over, and owning, the Pooled entities HealthTrust, LLC and Property-Liability Trust, LLC. The board structure changed: now there was but one board for the corporation LGC, Inc. which owned the LLC’s³. The decision making thus became unified; no matter the separate entity involved, the same people consider the issues.

RSA 5-B:5,I(b) requires that Pools “[b]e governed by a board, the majority of which is composed of elected or appointed public officials, officers or employees...”. The question is then whether the board of a separate, parent corporation over a Pool LLC meets the statutory requirement.

“Boards” are not recognized by the law governing limited liability companies, RSA 304-C; an LLC is run by its members or its managers. The current structure has the Pool LLC’s governed by the corporation which owns them, as sole “member”. Thus, there is no direct “board” responsible for the Pool LLC’s; rather, it is claimed under RSA 5-B:5,I(b) that the board of the parent company, Local Government Center, Inc., stands as “board” to the LLC’s. LGC, Inc. governs the Pool LLC’s as detailed in its Bylaws (RSA 5-B:5,I(e))⁴ As noted above, however, the LLC’s themselves have no bylaws. Thus, there is a question whether the Pools are properly governed as required by RSA 5-B:5,I(b).

BYLAWS.

Further complicating matters is the claim in LGC’s bylaws that there is a HealthTrust “Operating Agreement” and a PLT “Operating Agreement”⁵. Yet in response to questions posed by this office pursuant to the secretary’s powers in RSA 5-B:4-a (as amended), LGC noted that only the

LGC bylaws and New Hampshire Municipal Association Operating Agreements exist.⁶ In other words, there was no claim in LGC's response that HealthTrust, LLC or PLT, LLC Operating Agreements actually do exist. There seem to be no "bylaws" for the Pool LLC's as required by RSA 5-B:5,I(e).

RESERVES VERSUS SURPLUS

RSA 5-B:5,I(c) requires each Pool to "return all earnings and surplus in excess of amounts required for administration, claims, reserves and purchase of excess insurance" to the political subdivisions. There is considerable debate both in New Hampshire and nationwide about what these "amounts required" are, versus "earnings and surplus". The sums described in the list of "amounts required" should essentially consist of "overhead".

One complaint centers on the sharing or commingling of funds from one pool with another, or others. Since the pool statute (RSA 5-B:5, I(c)) requires, inter alia, that all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions, it becomes difficult if not impossible for there to be a meaningful accounting across lines when there is commingling.

A subsidiary complaint focuses on the apparent lack of accountability for the ancillary costs of the organization (i.e. overhead), in two senses: one, the organization has fought attempts to obtain details of such things as salaries and other overhead; and two, each Pool is a subsidiary of LGC, Inc., and thus has a relationship with another business not a Pool. Each also has business ties to yet another business (the real estate holding company), with the natural question of cost.

Analysis of RSA 5-B:5,I(c) with the updated authority of the secretary of state indicates that a review of amounts claimed to be required for claims, reserves and the purchase of excess insurance is necessary, to make the determination of what sums are properly determined to be returnable to the political subdivisions. Whereas under the prior statutory scheme, because there was no regulation, the Pools themselves have been the arbiters of what sums were to be determined to be "excess" and thereby returnable to the municipalities (a self-policing system),

the new law requires the secretary of state both to investigate and to declare what sums are proper for the operation of the Pool, and, by implication, what sums are excess.

Analysis of the amended RSA 5-B:5,I(b), which added language prohibiting board members from receiving compensation apart from mileage and other “reasonable expenses”, shows concern by the legislature about what may have been paid to board members previously. This “overhead” expense is reviewable by the secretary of state pursuant to RSA 5-B:4-a.

As to Administrative costs, prior to the mergers described above, the respective staffs of Property-Liability Trust and HealthTrust, Inc., staff would likely have been dedicated to the administration of each pool alone. With the changes to the corporate structure in 2003, eliminating the corporate forms the Pools had been housed in and forming LGC, Inc. as a parent over the Pool LLC’s, along with the creation of LGC Real Estate, Inc., there came consolidation of administration.

Personnel thus could be shifted from the day-to-day operations of each pool, as needed, perhaps eliminating duplication or redundancy and thus increasing efficiency. However, this also would raise issues as to how administrative costs would be allocated. In answer to a question posed by the Bureau to LGC (“Provide a list of all employees of LGC, NHMA, PLT, HealthTrust, and LGC Real Estate, and include for each employee his or her major duties, amount of time allocated to various duties and annual compensation”), LGC has indicated that “... only [its’] legal department allocates time by specific duties”; thus, LGC concedes it cannot account for specific allocation of staff time between Pool and non-Pool employment, and it thus is impossible to segregate the amounts required for administration of the Pool companies in and among themselves, as well as the non-Pool corporations.

This same observation equally applies to equipment. For example, if a copier necessary for the work of a Pool is used in part by the parent corporation, or staff training expenses are paid by the pool where the staffer’s services are used for both Pool and non-Pool matters, and no records are kept of the separate use, there is no accounting.

An additional complaint centers on pay and benefits for Pool employees. Prior to 2007, employees of the Pools were enrolled in a 401K retirement plan. In 2007, the employees of LGC were offered the opportunity to enroll in a “defined benefit” plan. All but 3 employees opted in. The defined benefit plan required a financial commitment from the employee, but also, to fund it, an immediate contribution from HealthTrust in the amount of \$792,938.00 as employer contribution to fund past service liability. Additionally, contributions of \$338,094 and \$635,050 were made in 2008 and 2007.⁷

Under the rubric of administration also falls expenses related to housing the Pools. LGC, Inc. says there are no leases between HealthTrust, NHMA, PLT and LGC; rather, “interactions among these entities are governed by LGC Board of Director actions and policies”. In answers to questions posed by this agency,⁸ expenditures are shown paid on a monthly basis, with additional lump sums paid. If, as seems evident, sums paid monthly are for “rent”, the question is whether the rental charged is fair market value. No explanation for the large lump sums paid by the Pools to LGC Real Estate, Inc. not apparently for rent is evident.

Prior to 2003, when HealthTrust, Inc. and Property-Liability Trust, Inc. existed as stand-alone non-profit, charitable corporations their financial activities were segregated and capable of independent financial analysis. Following the 2003 changes in which LGC, Inc. became the sole “member” of the LLC’s HealthTrust and Property-Liability Trust, there came an intermingling of finances.

Thus, starting in 2004, certain funds from HealthTrust were taken to help fund the workers’ compensation Pool. This was done by transferring 1% of the net contributions per month into a fund to support the workers’ compensation fund. This 1% does not appear to be required for administration, claims, reserves or purchase of excess insurance for HealthTrust, LLC, whose company filing in 2003 recites as having as a primary purpose, “to provide health benefits to employees of members”,⁹ and whose mission statement recites that it “...is to provide health and other benefits to Participants for their employees and to facilitate joint cooperation of the Participants in the exercise or in the performance of their essential governmental functions, powers or responsibilities related to the provision of such health and other benefits.”¹⁰

RSA 5-B:3 authorizes the creation of Pools to provide various coverages. Pools may provide “any or all” of coverages listed, one such coverage being Workers’ Compensation. RSA 5-B: 3, III(a). To use funds from one Pool to create another Pool creates a conflict between that portion of the statute authorizing Pool creation and that requiring “surplus” to be returned to the participating political subdivisions. Since moneys were taken from the HealthTrust, LLC Pool and used to fund the workers compensation pool, the statutory mandate of RSA 5-B that “surplus” be returned appears violated.

That this use of “surplus” is likely improper can also be seen in the fact that, while healthcare is provided to all who may benefit, workers compensation is inapplicable to retirees. Thus, funds received from retirees who must pay for healthcare through the political subdivisions which had employed them prior to their retirement have been forced to subsidize the creation of a Pool which they cannot use.

An additional consideration in the “return of surplus” question relates to the limitations on the return of surplus set forth in the bylaws and the NHMA Operating Agreement. A Pool participant may terminate membership, or be terminated from membership for enumerated reasons.¹¹ Although in the event of a withdrawal by a Pool participant participation is to continue for at least a year, a parting participant has “... no right to or claim upon any of the assets, income, distributions (whether past, present or future), reserves or property ...”.¹² This does not seem to comport with the mandate in RSA 5-B:5, I(c), that earnings and surplus be returned to the participating political subdivisions.

As noted above, RSA 5-B requires that “surplus” be returned to member communities. It does not authorize “surplus” be used for any other purpose. In testimony before the House Finance Committee on April 30, 2010, and in its response to questions propounded by the plaintiff in the matter of *The Professional Firefighters of New Hampshire et al v. New Hampshire Local Government Center, Inc. (PFFNH v. LGC)*,¹³ LGC conceded that it held surplus. It noted that rather than return the surplus to the member communities as required by RSA 5-B:5, I(c), it used this surplus in an attempt to subsidize rates, to offset future rate increases.¹⁴ It may well be good

policy to attempt to stabilize year-to-year rate increases, yet there appears no authorization for this in the statute.

The question of the line between “reserves” and “surplus” was discussed by LGC Actuary Peter Reimer at the House Committee Meeting on April 30, 2010. Initially Mr. Reimer spoke of what he considered a proper “reserve” using a concept known as “Risk Based Capital” or “RBC”. He said that LGC had been using the RBC model for managing its surplus since 2002.¹⁵ He noted RBC was developed by the American Academy of Actuaries and the National Association of Insurance Commissioners (NAIC), as an index to measure the relative strength of an insurer. Mr. Reimer indicated that companies with an RBC ratio of 2.0 or below became subject to regulatory intervention. He said that LGC’s target was an RBC ratio of 4.2, but that as of 2008, it held an RBC of 4.3.¹⁶

Mr. Reimer claimed that LGC returned to the members “in a measured scheduled way excess reserves”, excess of the 4.2 RBC.¹⁷ He then noted that in 2008, LGC had returned one third of the “reserve in excess of our own target”¹⁸ in the form of a credit in the rating formula.

It would appear that “reserve in excess of our own target” would be more clearly called “surplus”. Recall that RSA 5B:5,I (c) requires the return of “all earnings and surplus in excess of any amounts required for administration, claims, reserves and purchase of excess insurance to the participating political subdivisions. The statute is silent in the manner in which this is accomplished. Nonetheless, by implication, two thirds of “surplus” got retained.

This all presumes that “RBC” is a proper measure of prudent reserves. RBC would seem to apply to profit-making insurance entities. LGC is supposed to be non-profit. One significant problem with the use of RBC as the benchmark is the fact that it speaks of “capital”. New Hampshire contemplates the Pools being non-profits; thus, there is no need for “capital”.¹⁹

At this point, questions exist as to whether and to what extent sums received by LGC, Inc. by and through the Pools as parent corporation of these taxpayer-funded Pools have been properly expended.²⁰ HealthTrust admits having held “net assets” of more than 92 million dollars as of

12-31-08.²¹ The statute allows the Pool to retain amounts required for administration, claims, reserves and purchase of excess insurance. RSA 5-B:5,I(c). No firm “bright line” distinction exists between the statutorily-authorized sums to be retained and surplus. Yet consideration must be given to the manner in which HealthTrust has expended funds to run its operation.

In sum, this report raises questions of the compliance by the management by LGC of the Pooled Risk Management Programs under its control with the statutory mandates of RSA 5-B in two areas: corporate organization and governance, and reserves versus surplus. Although the expenditures described above raise questions as to the propriety of certain of the expenditures by LGC, Inc., at this point a more complete examination of the flow of money among the Pools and LGC, Inc. would be needed to show whether and to what extent Pool funds were expended on items unnecessary for the Pools’ statutory missions. In this regard, BSR is actively seeking the services of an independent actuary to undertake a review of the finances of LGC’s Pooled Risk Management Programs.

Respectfully submitted:

E. F. Wingate, III, Esq.
Staff Attorney

ENDNOTES

¹ 149:3 New Section; Pooled Risk Management Programs; Authority of Secretary of State. Amend RSA 5-B by inserting after section 4 the following new section:

5-B:4-a Authority of the Secretary of State; Investigations; Cease and Desist Orders; Penalties.

I. Notwithstanding any other provision of law, the secretary of state shall have exclusive authority and jurisdiction:

(a) To bring administrative actions to enforce this chapter.

(b) To investigate and impose penalties for violations of this chapter, including but not limited to:

(1) Fines.

(2) Rescission, restitution, or disgorgement.

II. The secretary of state shall have all powers specifically granted or reasonably implied in order to perform the substantive responsibilities imposed by this chapter.

III. For the purpose of any investigation, hearing, or proceeding under this chapter, the secretary of state or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the secretary of state deems relevant or material to the inquiry.

IV. In the event that a person refuses to obey a subpoena issued to him or her or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general or secretary of state or any officer designated by the secretary of state, may issue to the person an order directing him or her to appear before the attorney general or secretary of state, or the officer designated by him or her, to produce documentary evidence if so ordered or to give evidence relative to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt of court.

V. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the secretary of state's prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter.

VI. Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with RSA 421-B:26-a.

VII. The following fines and penalties may be imposed on any person who has violated this chapter.

(a) Any person who, either knowingly or negligently, violates any provision of this chapter or any rule or order thereunder, may, upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500. Each of the acts specified shall constitute a separate violation.

(b) After notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated this chapter, or rule or order under this chapter. Rescission, restitution, or disgorgement shall be in addition to any other penalty provided for under this chapter.

VIII. Decisions of the secretary of state may be appealed to the supreme court pursuant to RSA 541.

149:4 Standards of Organization and Operation. Amend RSA 5-B:5, I(b) to read as follows:

(b) Be governed by a board the majority of which is composed of elected or appointed public officials, officers, or employees. ***Board members shall not receive compensation but may be reimbursed for mileage and other reasonable expenses.***

149:5 New Subparagraph; Standards of Organization and Operation. Amend RSA 5-B:5, I by inserting after subparagraph (f) the following new subparagraph:

(g) Provide notice to all participants of and conduct 2 public hearings for the purpose of advising of potential rate increases, the reasons for projected rate increases, and to solicit comments from members regarding the return of surplus, at least 10 days prior to rate setting for each calendar year.

149:6 Limitations on Reserves and Administrative Expenses of Pooled Risk Management Programs. The secretary of state, in consultation with the insurance commissioner and by employing the services of an actuary who has experience with pooled risk management programs and is a qualified member of the American Academy of Actuaries, 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 may use funds from the investor education fund established in RSA 421-B:21, II-c to pay for the services of the actuary.

149:7 Periodic Reporting. The secretary of state shall provide a report of ongoing investigations of any pooled risk management programs at least every 6 months to the senate committee and house committee with jurisdiction over matters of commerce.

149:8 Repeal. The following are repealed:

I. 2009, 128:4, relative to the 2011 amendment of the pooled risk management program informational filing fee.

II. 2009, 128:5, I, relative to the effective date of the amendment of pooled risk management program informational filing fee.

III. RSA 5-B:4-a, relative to pooled risk management programs and the secretary of state.

149:9 Effective Date.

I. Paragraph III of section 8 of this act shall take effect July 1, 2013.

II. The remainder of this act shall take effect upon its passage.

Approved: June 14, 2010

Effective Date: I. Paragraph III of section 8 shall take effect July 1, 2013.

II. Remainder shall take effect June 14, 2010

² At the time RSA 5-B was enacted in 1987, there was no such entity as a “Limited Liability Company” or “LLC” in New Hampshire law. The LLC law was enacted effective July 1, 1993.

³ This corporate board had 25 members drawn from the constituent members: 10 from schools, 10 from municipalities, 2 from teachers, and one each for county, fire and police.

⁴ LGC’s Bylaws have broken governance down into seven “committees”: NHMA Municipal Advocacy; Risk and Health Management; Finance; Strategic Planning; Nominating; Personnel; and Retirement.

The entities to which the committees answer, and their responsibilities, varies:

NHMA Municipal Advocacy Committee is composed of municipal directors except for the county director and others elected per the NHMA Operating Agreement.

Risk and Health Management Committee composition is not addressed; it considers loss prevention and wellness programs.

Finance Committee does budgeting, and reviews financial and actuarial rating procedures, the annual independent audit process, investment policy, internal audit and financial statements.

Strategic Planning Committee reviews risk programs and member services to ensure competitiveness and attraction and retention of members and other policies of LGC not assigned to other committees.

Nominating Committee nominates Directors, Chair and Vice-Chair; it makes recommendations on amendments to the LGC by-laws. It is made up of 2 municipal, 2 school and 1 employee official.

Personnel Committee oversees pay and benefits, evaluates the executive director, recommends to the directors changes to such policies without further action by the directors, and recommends additional staff positions. It is made up of 2 municipal, 2 school and 1 employee member; the vice chair of the LGC board is the chair of this committee.

Retirement Committee is (i) plan administrator to the NH LGC, Inc. Defined Benefit Pension Plan with power to take all actions for implementation and ongoing administration of the plan, including selection of investment advisor and possible engagement of third party administrator; (ii) make administrative or technical amendments as recommended by advisors, plan actuary or legal counsel. It is comprised of 5 members of Personnel Committee, 3 LGC employee representatives elected by employee-participants, 2 senior management representatives appointed by the LGC board and 1 outside representative appointed by the LGC Board, who is the committee chair.

⁵ Bylaws, Art. 1, Definitions.

⁶ Question: "Provide copies of the NHMA Operating Agreement, the HealthTrust Operating Agreement, the PLT Operating Agreement, and any rules and other agreements pursuant or indent to the operative documents as defined in the LGC bylaws." Answer: "The following documents exist: LGC Bylaws and an NHMA Operating Agreement. These are provided."

⁷ Answers to interrogatories, *Professional Firefighters of New Hampshire et al v. New Hampshire Local Government Center, Inc., et al*, Merrimack County Superior Court #10-E-0082, page 26 (hereinafter PFFFNH v. LGC).

⁸ Answers to BSR interrogatories. As to the Pool PLT, a review of 2008 PLT "CMA Disbursements" shows payments to "LGC Real Estate" or "Local Government Real Estate" or "LGR" on or about the first of each month of \$5,192.61, with a one-time payment to "LGR" on 9-9-08 of \$613,886.87. Thus it appears that in 2008, PLT paid \$62,311.32 in rent, with an additional payment of unknown purpose to "LGR" of over \$600,000.00. In 2007, "CMA Disbursements" show a payment to "Local Gov't Center Real Estate" on 5-4-07 of \$10,385.22, and payments to "LGC Real Estate Inc." or "LGR Rent" or "LGR Real Estate" on 6-1-07, 7-11-07, 9-4-07 10-1-07, 11-1-07 and 12-6-07 of \$5,192.61. In 2006, "CMA Disbursements" show no payments to real estate, only bank fees and two payments to Citizen's Bank, on 8-18-06 for \$2,000,000.00 and on 11-16-06 "Citizen 90 day CD Renewal" for \$1,000,000.00.

As to the Pool HealthTrust, a review of 2008 HealthTrust “CMA Disbursements” show payments on or about the first of each month to “LGC Real Estate” or “Local Government Real Estate” or “LGR” of \$16,224.95, with payments to “LGC Real Estate” on 6-13-08 of \$410,465.67 and on 9-9-08 of \$2,455,547.46. In 2007, “CMA Disbursements” show a payment on 5-4-07 to “Local Govt Ctr Real Estate” of \$32,449.90 and payments in each month following of \$16,224.95. In 2006, there are no “CMA Disbursements” to LGC Real Estate or any similarly-named entity.

⁹ Certificate of Filing 6-24-03.

¹⁰ LGC Bylaws, Art II, sec 2.1.

¹¹ NHMA Operating Agreement Art. IV.

¹² NHMA Operating Agreement section 4.8 (a).

¹³ PFFNH v. LGC answers to interrogatories at pp 16-17.

¹⁴ PFFNH v. LGC answers to interrogatories at p 2

¹⁵ Transcript, House Finance Committee meeting of April 30, 2010, p 17.

¹⁶ Id, p 21.

¹⁷ Id, p 21.

¹⁸ Id, p 32.

¹⁹ The question of “reserves” versus “surplus” has also been reviewed in a report prepared for the Pennsylvania General Assembly Legislative Budget and Finance Committee, dated June 13, 2005, in which the structure and operation of Pennsylvania’s “Blue Plans” were analyzed. (Considerations for Regulating Surplus Accumulation and Community Benefit Activities of Pennsylvania’s Blue Cross and Blue Shield Plans, Final Report, by The Lewin Group.) One analysis of appropriate surplus considered RBC, which under Pennsylvania law formed the statutory and regulatory framework in place to monitor the essential solvency of the Blue Plans. RBC is therein described as “... a valuable tool developed by the NAIC to measure the risks faced by insurers and to identify a level of surplus necessary to minimize the threat of insolvency resulting from the measured level of risk”, and includes factors such as asset risk, underwriting risk, credit risk and business risk. The Pennsylvania report notes that there is dispute about whether RBC is an appropriate measure of risk in the health insurance field. Criticism of this methodology notes that RBC does not aid in determining an appropriate level of surplus for a well-managed going concern or the level of surplus necessary to allow business growth or diversification, service enhancements or catastrophe management. Pennsylvania’s report concluded that RBC was an appropriate measure of risk, and further concluded that an RBC of 5.5 to 7.5 was appropriate for non-profit organizations.

²⁰ A review of 130 pages of LGC, Inc. expenditures provided the BSR in response to requests for information shows funds spent for the following (among many other expenditures):

1-27-06 \$2,141.25 for First Impressions Caterer; \$5000.00 for NH Excellence in Education; 2-10-06 \$500.00 for The Margate; \$500.00 for the Mountain Club at Loon; 2-17-06 the Hundred Club of NH \$1,250; 2-24-06 First Impressions Caterer \$2287.65; 3-10-06 First Impressions Caterer \$1,077.00; Holiday Inn by the Bay \$1,083.00, 3-15-06 Local Government Real Estate \$1,645,000.00; 3-17-06 United Way of Merrimack County \$777.73; 3-27-06

National League of Cities \$3,750.00; 3-31-06 North Shore Comedy, Inc. \$200.00; First Impressions Caterer \$886.00; Weightwatchers \$2,760.00; NH School Administrators Assn \$18,000.00; Antioch New England Institute \$19,745.00; UNH/NH Institute for Health Policy \$25,000.00; 4-7-06 Gunstock Area \$69.75; Big Easy Bagels \$156.25; NH School Boards Association \$44,500.00; 4-14-06 Red Jacket Mountain View Res \$100.00; American Red Cross \$750.00; National League of Cities \$13,404.00; 4-21-06 Washington Street Café \$205.00 ; Providence Biltmore \$381.94; Galley Hatch Conference Center \$1,070.40; First Impressions Caterer \$3,231.00; 4-27-10 Sheraton Nashua Hotel \$5,355.24 (twice); 4-28-06 United Way of Merrimack County \$1,084.68; First Impressions Caterer \$6,742.30; 5-5-06 LGC Workers Compensation, LL \$125,472.99; 5-9-06 Wayfarer Inn \$646.15; 5-12-06 New London Rotary Club \$400.00; Woodstock Inn & Resort \$570.00; United Way of Merrimack County \$774.73; First Impressions Caterer \$4,907.14; 5-19-06 Auntie Henrietta's Comedy Ro \$250.00; First Impressions Caterer \$2,011.95; 5-23-06 Gunstock Inn \$1,050.00; 6-9-06 Say It In Stitches Inc \$1,058.25; 6-16-06 Cabot Motor Inn, Inc. 237.60; North Shore Comedy, Inc. \$500.00; Operation Santa Claus \$500.00; NH Municipal Managers Assoc \$5,580.00; Gunstock Area \$12,574.00; 6-23-06 Aylmer's At Your Door \$435.00; Woodstock Inn & Resort \$675.00; NH Bar Association \$3,865.00; 6-30-06 Hampshires Culinary Planning \$343.00; 7-11-06 Lawyers Diary and Manual \$265.00; 7-20-06 First Impressions Caterer \$15,301.00; New Horizons CLC \$17,000.00; 8-4-06 Sage with Thyme \$525.00; United Way of Merrimack County \$732.73; Red Jacket Mountain View Res \$7,639.01; 8-11-06 Washington Street Café \$582.00; First Impressions Caterer \$600.00; 8-15-06 Special Olympics NH \$3,000.00; 9-1-06 Attitash Grand Summit Hotel \$12,438.56; 9-8-06 Sheraton Nashua Hotel \$2,525.76; 9-15-06 NH Trial Lawyers Association \$255.00 etc etc 10-20-06 Ser All American Exposition \$5,000.00; 11-3-06 First Impressions Caterer \$7,289.65; The Event Center \$7,488.00; 11-10-06 First Impressions Caterer \$1,489.55; State Employees Assoc. of NH \$2,000.00; 11-22-06 Hilton Garden Inn \$1,500.00; 12-1-06 First Impressions Caterer \$1,595.95; The Mountain Club on Loon \$4870.30; Antioch New England Institute \$17,107.00; 12-8-06 NHMCLE Board \$630.00; Executive Court \$3,367.10; Advantage Promotions, Inc. \$10,503.72; 12-15-06 First Impressions Caterer \$4,085.15; 12-22-06 Garard Catering \$2,343.50; 12-19-06 Bostonbean Coffee Company \$256.70; First Impressions Caterer \$1,191.25; Gordian Health Solutions \$1,500.00; Radisson Hotel – Manchester \$68,628.11.

Similar expenditures are shown for 2007 and 2008.

²¹ PFFNH v. LGC, answers to interrogatories p. 17.