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# Perspectives on Public Officials Liability

James A. Swanke and Timothy A. Crummy

**T**he erosion of governmental immunity laws in recent years has made local governments and their public officials increasingly susceptible to liability lawsuits. The personal assets of individuals in public service are no longer immune from lawsuits. Public officials can be held accountable for their errors and omissions in management decisions much the same as their corporate counterparts. General liability and business automobile insurance policies traditionally purchased by local governments, however, do not cover public officials liability claims.

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The absence of errors and omissions coverage under general liability and business automobile insurance policies has forced local governments across the country to search for ways to mitigate their growing public officials liability loss exposure. Various loss-funding alternatives have been employed by local governments to handle this exposure area. Common techniques include public officials liability insurance, formal self-insurance programs, pools, and retention. Regardless of the funding strategy selected, local governments and their public officials need to understand the public officials liability exposure to protect themselves effectively.

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## Public Officials Liability Survey

In the fall and winter of 1988-89, The Wyatt Company and ICMA conducted a survey of local governments throughout the United States to gather information about public officials liability. The second edition of the Special Report *Public Officials Liability Insurance: Understanding the Market* contains the results. Survey data were gathered from 1,329 local governments, representing all 50 states. The information came from claims initiated and concluded between 1983 and 1988. Wyatt and ICMA published the first survey results in 1986, based on a similar Wyatt survey in 1982.

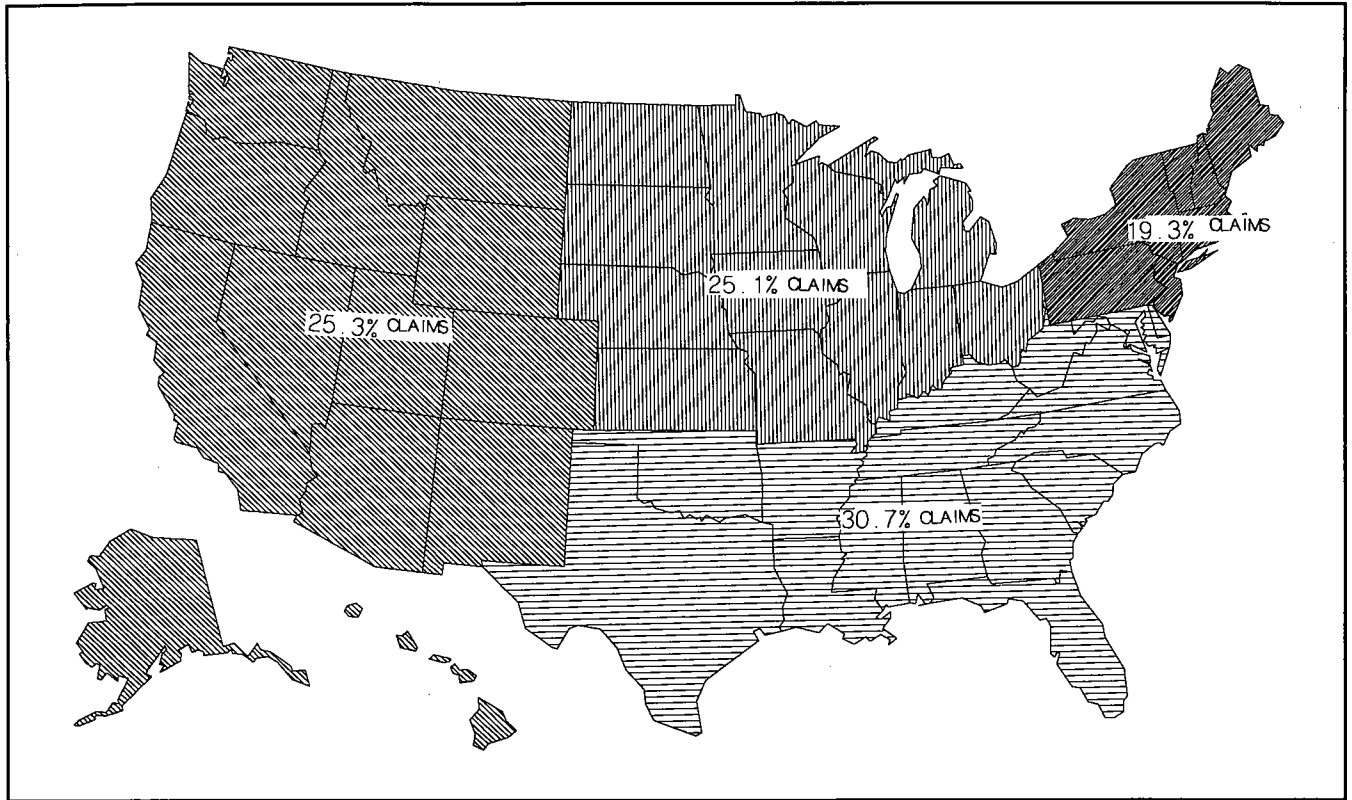
The current survey contains information on public officials liability claims and losses; insurance limits, premiums, and deductibles; and the public officials liability insurance market. Information is broken down by geographic regions and population size. These divisions and numerous tables and graphs help readers apply findings accurately to their local governments.

## Liability Claims

A primary objective of the survey was to profile claims filed against local governments. The survey contains comprehensive claims information about claims activity, claims activity, claims severity, defense costs, claimants, and sources of claims.

## Claims Activity Has Leveled Off

The survey gauges claims activity according to two measures: susceptibility and frequency. Claims susceptibility measures the number of local governments reporting and disposing of at least one claim during the survey period. Claims frequency is the number of disposed claims per participant. Both measures indicate that claims have leveled off between 1986 and 1989. This finding contrasts



**Figure 1 Claims Susceptibility by Geographic Region**

with the increase in claims during the early 1980s.

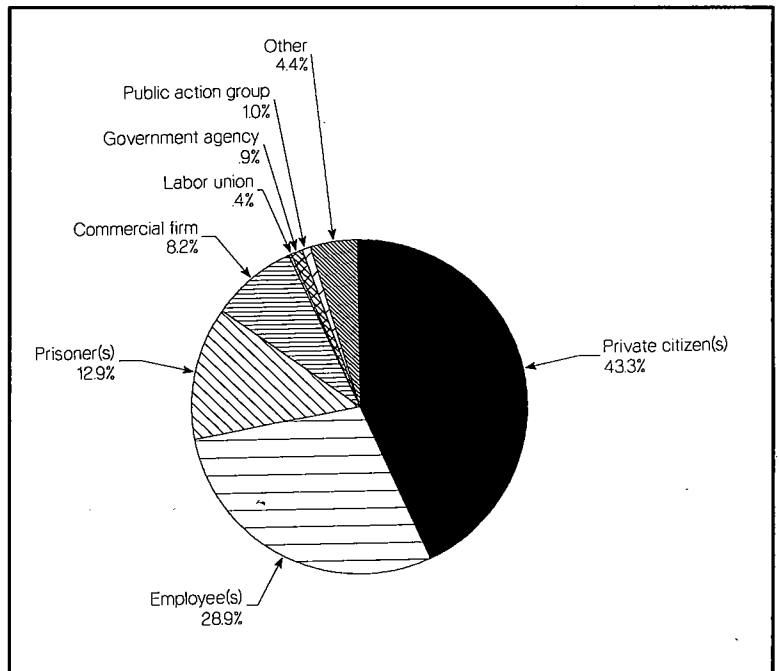
Due to the number of participants reporting more than one claim during the period, claims frequency is often higher than susceptibility. The claims susceptibility of local governments was 26 percent, while the claims frequency was .685 claims per respondent. Overall claims activity was strongly associated with population size. Governments with populations between 50,000 and 250,000 faced the highest susceptibility to claims; the survey reported 34 percent of these respondents faced at least one claim. This population range also reported the highest claims frequency.

Claims susceptibility and frequency varied across the country. As figure 1 indicates, the southern region encountered the greatest susceptibility, while the Northeast reported the least.

The survey reveals that public officials liability claims arise from many different claimants and sources. Figure 2 identifies common claimants. Private citizens account for the largest portion of claims. Other frequent claimants are employees, prisoners, and commercial firms. Improper dismissal of employees is the most common source of public officials liability claims. Claims also commonly arise from zoning and rezoning actions, treatment of suspects and prisoners, and Title 7 discrimination.

#### Claims Severity Increases

The largest claim settlement reported in the survey was \$5.2 million. This is substantially larger than the \$230,000 and \$1.1 million peak settlements in the 1982 and 1986 surveys, respectively. The average amount



**Figure 2 Percentage of Public Officials Liability Claims by Claimant Type**

sought by claimants decreased, however. On the average, plaintiffs sought \$1.9 million in the 1989 survey (excluding the largest claim) compared with \$2.2 million in the 1986 survey.

The majority of the claims were for far less than the average claim. More than one-half sought \$50,000 or less, and an additional 25

percent sought no monetary damages. Overall, local governments reported that more than 50 percent of claims were concluded with no damage award.

Figure 3 shows the average claim sought by population size. Unlike claims activity, there did not seem to be a strong correlation between population size and claims severity.

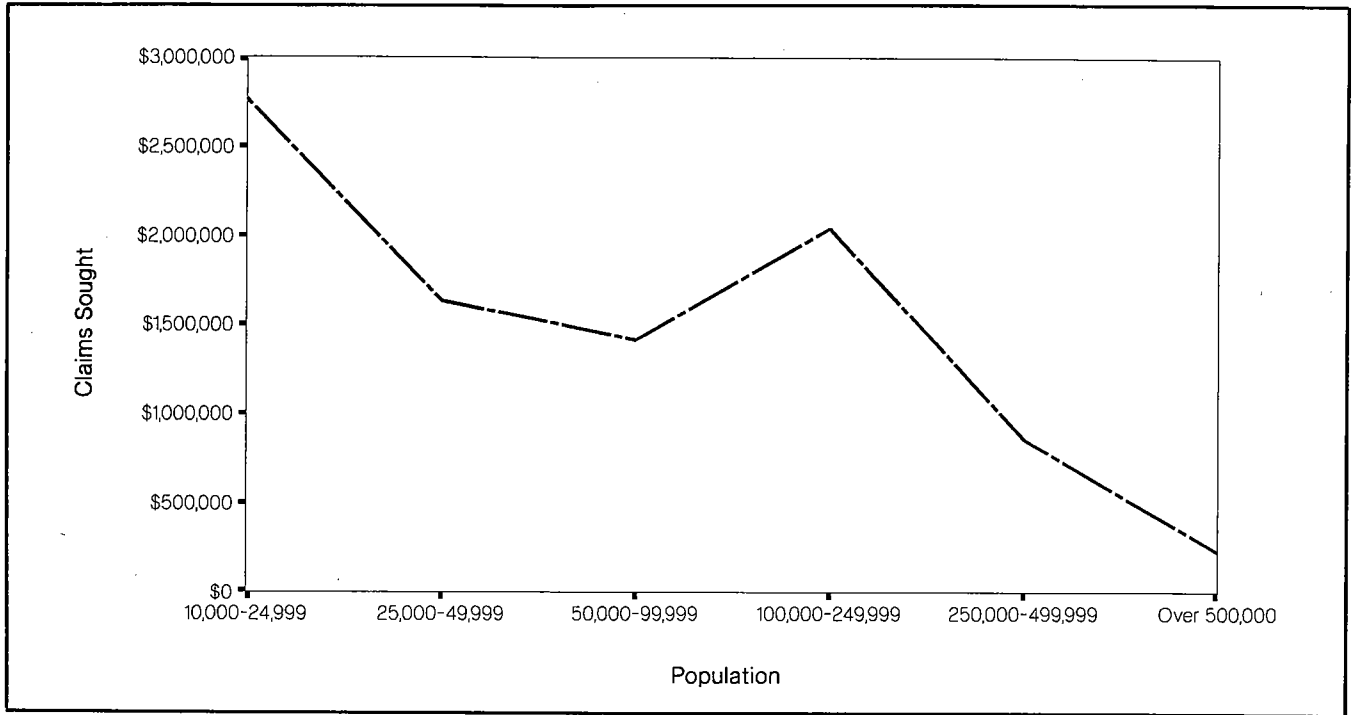


Figure 3 Average Claim Sought by Population Size

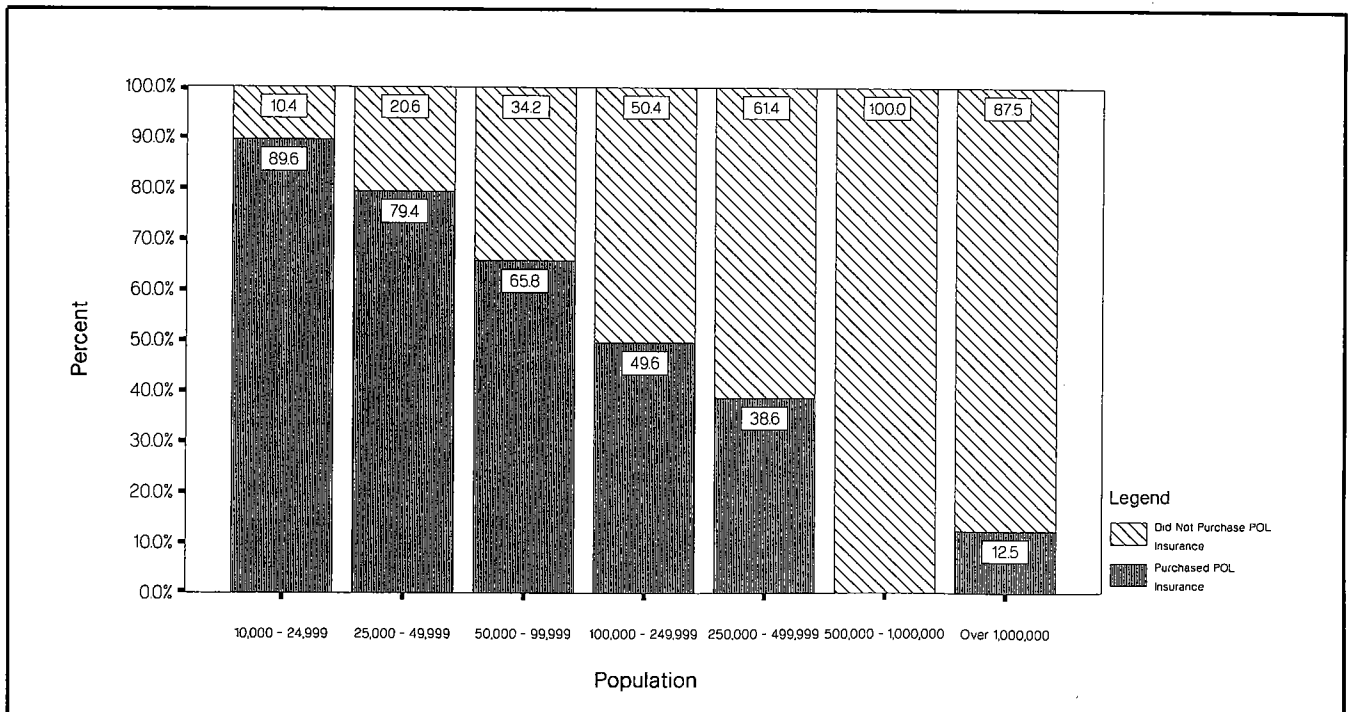


Figure 4 Respondents Having Public Officials Liability Insurance

### Cost to Defend Claims Continues to Rise

The actual settlement amounts paid by local governments make up only a portion of the cost attributed to public officials liability claims. Defense costs are often substantial and represent an important consideration for local governments. The average defense cost in the survey was \$16,477. This compares with an average of \$15,521 in the 1986 survey.

Over the past decade, governmental immunity laws have been rescinded and claims severity and defense costs have increased. These occurrences forced local governments to find protection from public officials liability claims. Not surprisingly, the number of local governments purchasing liability insurance has increased during this period.

### Public Officials Liability Insurance

The percentage of local governments purchasing professional liability insurance coverage from either insurers or pools increased from 68 percent in the 1982 survey to more than 86 percent in the 1986 survey. Surprisingly, the 1989 survey indicated that this number has decreased to 76 percent. Two primary reasons account for this reduction. First, individual self-insurance has gained in popularity; second, soaring premiums and restrictive policy provisions have forced many local governments to forego coverage altogether.

Figure 4 indicates a correlation between population size and likelihood of purchasing insurance. Almost 90 percent of local govern-

ments with populations of 10,000 to 25,000 purchased insurance. As population increased, the incidence of insurance coverage decreased. This negative correlation held in all population divisions except local governments with more than 1,000,000 people. These local governments purchased insurance more frequently than local governments of 500,000 to 1,000,000.

Although the percentage of local governments purchasing public officials liability insurance decreased between the 1986 and 1989 surveys, the percentage perceiving no need for coverage has plummeted. Of the uninsured entities surveyed in 1986, 25 percent cited insurance as unnecessary while only 3 percent felt similarly in the 1989 survey. Other reasons for not purchasing insurance included unavailability, prohibitive cost, and formalized self-insurance programs.

### Policy Limits

The survey revealed that the average insurance policy limit carried by local governments decreased across every population group since 1986. This can be attributed to the contraction of the public officials liability insurance market. The number of insurers writing primary and excess coverages has decreased.

The most common limit purchased was \$1 million, but more than half of the insured respondents reported endorsing their umbrella liability insurance to increase limits. As Table 1 shows, the average limit purchased was almost \$2.2 million.

Budget (in thousands)	Lowest	First quartile	Median	Third quartile	Highest	Average
Under \$5,000	\$ 100,000	\$ 1,000,000	\$ 1,000,000	\$ 2,000,000	\$ 11,000,000	\$ 1,668,735
5,000 - 9,000	100,000	1,000,000	1,000,000	2,000,000	16,000,000	2,042,681
10,000 - 49,000	100,000	1,000,000	1,000,000	2,000,000	25,000,000	2,296,316
50,000 - 99,999	100,000	1,000,000	1,000,000	3,000,000	10,000,000	2,466,935
100,000 - 250,000	100,000	1,000,000	1,000,000	2,250,000	15,000,000	3,195,652
Over 250,000	300,000	300,000	5,150,000	10,000,000	10,000,000	5,150,000
All	\$ 100,000	\$ 1,000,000	\$ 1,000,000	\$ 2,000,000	\$ 25,000,000	\$ 2,189,503

**Table 1 Total Public Officials Liability Policy Limits by Annual Budget**

## A Special Report on Public Officials Liability Insurance

The second edition of ICMA's Special Report, *Public Officials Liability Insurance: Understanding the Market*, is a complete guidebook to today's liability insurance market. Based on a nationwide insurance survey conducted in the fall and winter of 1988-1989 by The Wyatt Company, it was published through a joint project of ICMA and The Wyatt Company. The publication includes 30 reference tables, 16 figures, and strategies for local government professionals to follow when obtaining public officials liability insurance.

To purchase this Special Report (item number 40362, \$38.00 plus \$3.95 handling charge), contact ICMA Order Processing, 777 North Capitol Street, N.E., Suite 500, Washington, D.C. 20002-4201, 202/962-3620. **PM**

### Deductibles

Like property and automobile insurance, public officials liability insurance policies are frequently subject to deductibles. A deductible allows the insurer to reduce its loss payouts and adjustments expenses. The cost control associated with a deductible thus allows the insurer to charge lower premiums. Higher deductibles accordingly translate into greater premium reductions.

Deductible levels have risen across all

population categories since the 1986 survey. Local governments have been forced to increase their retentions to keep premiums reasonable as the price of public officials liability insurance has skyrocketed.

### Premiums

Since the 1986 survey was conducted, the insurance market for most lines of insurance has softened considerably and premiums have decreased. The market for public officials liability insurance has hardened, however, and premiums have risen. In fact, the premiums reported in the 1989 survey were often two to three times higher than the 1986 levels.

Because of the hard insurance market, public officials liability premiums often vary substantially among similar local governments. Some of the factors that affect public officials liability insurance premiums are the size of the local government, policy limit, deductible or retention arrangements, and loss experience.

### Insurance Carriers

The number of insurance companies writing public officials liability coverage is limited. A small group of insurers thus controls a large market share. An insurer's market share can be measured two ways: by the number of local government accounts and by total premium volume. These two measures revealed different market share leaders. When measured by number of accounts, the Nationwide

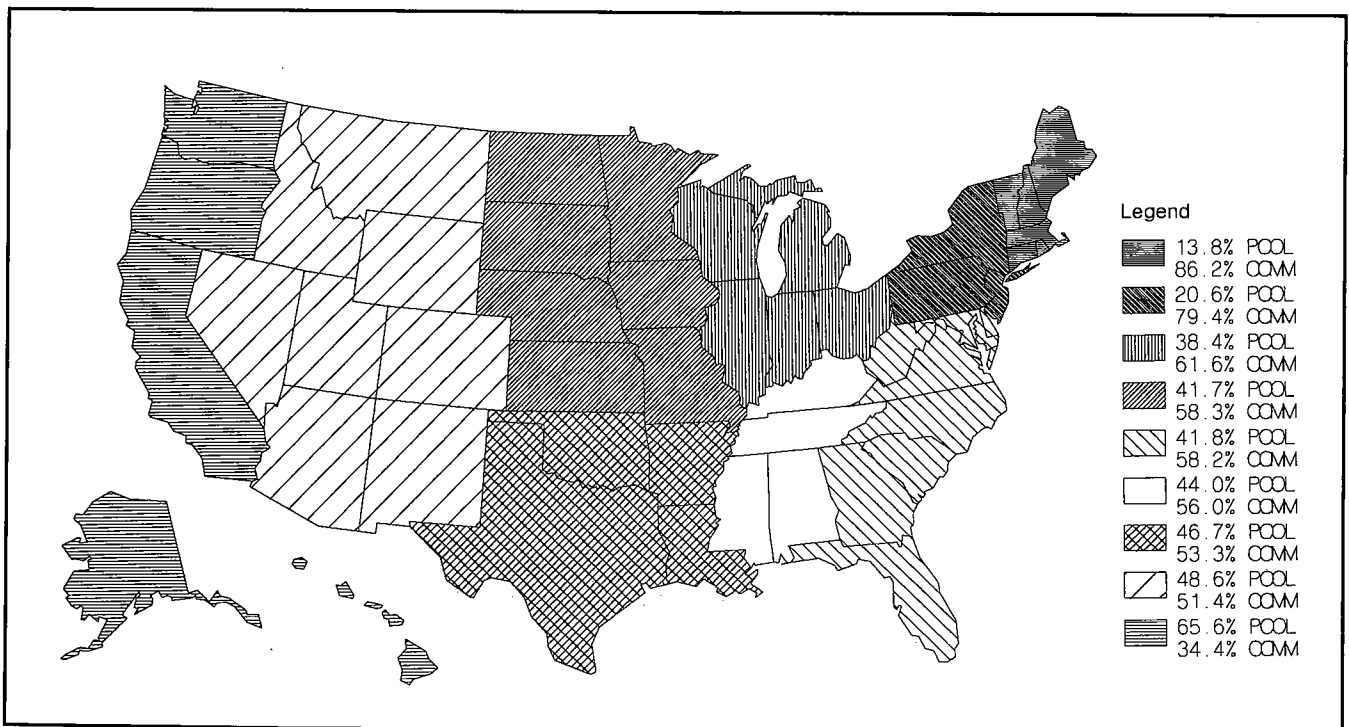


Figure 5 Percentage of Pooled vs. Commercial Insurance by Region

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Group, whose two leading public officials liability carriers are Scottsdale Insurance Company and National Casualty Insurance Company, controlled 31.9 percent of the market. When market share was measured by premium volume, however, National Union Fire Insurance Company, a subsidiary of American International Group, led all insurers with 20 percent.

The public officials liability insurance market has remained hard since 1986. The increased premiums and coverage restrictions demonstrate its continued volatility. Nevertheless, many insurers continue to reenter the market. This reentry should benefit purchasers by increasing the level of competition. The number of local governments purchasing public officials liability insurance thus may return to its previous levels.

“Pooling” has become a popular alternative to traditional insurance. As figure 5 shows, the popularity of pooling varies significantly by geographic region. More than 65 percent of respondents from the West Coast partici-

pate in pools—almost five times the number in the Northeast.

### **Conclusion**

Local governments continue to face difficulty managing their public officials liability loss exposure. Although the incidence of claims has leveled off, claims severity has continued to increase. In addition, the public officials liability insurance market has remained hard. These trends make it increasingly important for local governments and their public officials to understand their loss exposures and the alternative means of protection available. The second edition of *Public Officials Liability Insurance: Understanding the Market* identifies and explains the public officials liability loss exposure and summarizes local governments’ risk-financing techniques. The survey is a valuable tool for all local governments searching to mitigate their public officials liability exposure. **PM**