

**SB3288**



**96TH GENERAL ASSEMBLY**

**State of Illinois**

**2009 and 2010**

**SB3288**

Introduced 2/9/2010, by Sen. Terry Link

**SYNOPSIS AS INTRODUCED:**

20 ILCS 405/405-105  
30 ILCS 105/25

was 20 ILCS 405/64.1  
from Ch. 127, par. 161

Amends the Department of Central Management Services Law and the State Finance Act. Exempts payments under plans of the Department of Central Management Services for certain liability and indemnification claims and final judgment settlements from the prohibition against expenditure in a fiscal year of moneys appropriated in an earlier fiscal year. Effective immediately.

LRB096 16578 JAM 31852 b

FISCAL NOTE ACT  
MAY APPLY

**A BILL FOR**

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Department of Central Management Services  
5 Law of the Civil Administrative Code of Illinois is amended by  
6 changing Section 405-105 as follows:

7 (20 ILCS 405/405-105) (was 20 ILCS 405/64.1)

8 Sec. 405-105. Fidelity, surety, property, and casualty  
9 insurance. The Department shall establish and implement a  
10 program to coordinate the handling of all fidelity, surety,  
11 property, and casualty insurance exposures of the State and the  
12 departments, divisions, agencies, branches, and universities  
13 of the State. In performing this responsibility, the Department  
14 shall have the power and duty to do the following:

15 (1) Develop and maintain loss and exposure data on all  
16 State property.

17 (2) Study the feasibility of establishing a self-insurance  
18 plan for State property and prepare estimates of the costs of  
19 reinsurance for risks beyond the realistic limits of the  
20 self-insurance.

21 (3) Prepare a plan for centralizing the purchase of  
22 property and casualty insurance on State property under a  
23 master policy or policies and purchase the insurance contracted

1 for as provided in the Illinois Purchasing Act.

2 (4) Evaluate existing provisions for fidelity bonds  
3 required of State employees and recommend changes that are  
4 appropriate commensurate with risk experience and the  
5 determinations respecting self-insurance or reinsurance so as  
6 to permit reduction of costs without loss of coverage.

7 (5) Investigate procedures for inclusion of school  
8 districts, public community college districts, and other units  
9 of local government in programs for the centralized purchase of  
10 insurance.

11 (6) Implement recommendations of the State Property  
12 Insurance Study Commission that the Department finds necessary  
13 or desirable in the performance of its powers and duties under  
14 this Section to achieve efficient and comprehensive risk  
15 management.

16 (7) Prepare and, in the discretion of the Director,  
17 implement a plan providing for the purchase of public liability  
18 insurance or for self-insurance for public liability or for a  
19 combination of purchased insurance and self-insurance for  
20 public liability (i) covering the State and drivers of motor  
21 vehicles owned, leased, or controlled by the State of Illinois  
22 pursuant to the provisions and limitations contained in the  
23 Illinois Vehicle Code, (ii) covering other public liability  
24 exposures of the State and its employees within the scope of  
25 their employment, and (iii) covering drivers of motor vehicles  
26 not owned, leased, or controlled by the State but used by a

1 State employee on State business, in excess of liability  
2 covered by an insurance policy obtained by the owner of the  
3 motor vehicle or in excess of the dollar amounts that the  
4 Department shall determine to be reasonable. Any contract of  
5 insurance let under this Law shall be by bid in accordance with  
6 the procedure set forth in the Illinois Purchasing Act. Any  
7 provisions for self-insurance shall conform to subdivision  
8 (11).

9 The term "employee" as used in this subdivision (7) and in  
10 subdivision (11) means a person while in the employ of the  
11 State who is a member of the staff or personnel of a State  
12 agency, bureau, board, commission, committee, department,  
13 university, or college or who is a State officer, elected  
14 official, commissioner, member of or ex officio member of a  
15 State agency, bureau, board, commission, committee,  
16 department, university, or college, or a member of the National  
17 Guard while on active duty pursuant to orders of the Governor  
18 of the State of Illinois, or any other person while using a  
19 licensed motor vehicle owned, leased, or controlled by the  
20 State of Illinois with the authorization of the State of  
21 Illinois, provided the actual use of the motor vehicle is  
22 within the scope of that authorization and within the course of  
23 State service.

24 Subsequent to payment of a claim on behalf of an employee  
25 pursuant to this Section and after reasonable advance written  
26 notice to the employee, the Director may exclude the employee

1 from future coverage or limit the coverage under the plan if  
2 (i) the Director determines that the claim resulted from an  
3 incident in which the employee was grossly negligent or had  
4 engaged in willful and wanton misconduct or (ii) the Director  
5 determines that the employee is no longer an acceptable risk  
6 based on a review of prior accidents in which the employee was  
7 at fault and for which payments were made pursuant to this  
8 Section.

9 The Director is authorized to promulgate administrative  
10 rules that may be necessary to establish and administer the  
11 plan.

12 Appropriations from the Road Fund shall be used to pay auto  
13 liability claims and related expenses involving employees of  
14 the Department of Transportation, the Illinois State Police,  
15 and the Secretary of State.

16 (8) Charge, collect, and receive from all other agencies of  
17 the State government fees or monies equivalent to the cost of  
18 purchasing the insurance.

19 (9) Establish, through the Director, charges for risk  
20 management services rendered to State agencies by the  
21 Department. The State agencies so charged shall reimburse the  
22 Department by vouchers drawn against their respective  
23 appropriations. The reimbursement shall be determined by the  
24 Director as amounts sufficient to reimburse the Department for  
25 expenditures incurred in rendering the service.

26 The Department shall charge the employing State agency or

1 university for workers' compensation payments for temporary  
2 total disability paid to any employee after the employee has  
3 received temporary total disability payments for 120 days if  
4 the employee's treating physician has issued a release to  
5 return to work with restrictions and the employee is able to  
6 perform modified duty work but the employing State agency or  
7 university does not return the employee to work at modified  
8 duty. Modified duty shall be duties assigned that may or may  
9 not be delineated as part of the duties regularly performed by  
10 the employee. Modified duties shall be assigned within the  
11 prescribed restrictions established by the treating physician  
12 and the physician who performed the independent medical  
13 examination. The amount of all reimbursements shall be  
14 deposited into the Workers' Compensation Revolving Fund which  
15 is hereby created as a revolving fund in the State treasury. In  
16 addition to any other purpose authorized by law, moneys in the  
17 Fund shall be used, subject to appropriation, to pay these or  
18 other temporary total disability claims of employees of State  
19 agencies and universities.

20 Beginning with fiscal year 1996, all amounts recovered by  
21 the Department through subrogation in workers' compensation  
22 and workers' occupational disease cases shall be deposited into  
23 the Workers' Compensation Revolving Fund created under this  
24 subdivision (9).

25 (10) Establish rules, procedures, and forms to be used by  
26 State agencies in the administration and payment of workers'

1 compensation claims. The Department shall initially evaluate  
2 and determine the compensability of any injury that is the  
3 subject of a workers' compensation claim and provide for the  
4 administration and payment of such a claim for all State  
5 agencies. The Director may delegate to any agency with the  
6 agreement of the agency head the responsibility for evaluation,  
7 administration, and payment of that agency's claims.

8 (11) Any plan for public liability self-insurance  
9 implemented under this Section shall provide that (i) the  
10 Department shall attempt to settle and may settle any public  
11 liability claim filed against the State of Illinois or any  
12 public liability claim filed against a State employee on the  
13 basis of an occurrence in the course of the employee's State  
14 employment; (ii) any settlement of such a claim is not subject  
15 to fiscal year limitations and must be approved by the Director  
16 and, in cases of settlements exceeding \$100,000, by the  
17 Governor; and (iii) a settlement of any public liability claim  
18 against the State or a State employee shall require an  
19 unqualified release of any right of action against the State  
20 and the employee for acts within the scope of the employee's  
21 employment giving rise to the claim.

22 Whenever and to the extent that a State employee operates a  
23 motor vehicle or engages in other activity covered by  
24 self-insurance under this Section, the State of Illinois shall  
25 defend, indemnify, and hold harmless the employee against any  
26 claim in tort filed against the employee for acts or omissions

1 within the scope of the employee's employment in any proper  
2 judicial forum and not settled pursuant to this subdivision  
3 (11), provided that this obligation of the State of Illinois  
4 shall not exceed a maximum liability of \$2,000,000 for any  
5 single occurrence in connection with the operation of a motor  
6 vehicle or \$100,000 per person per occurrence for any other  
7 single occurrence, or \$500,000 for any single occurrence in  
8 connection with the provision of medical care by a licensed  
9 physician employee.

10 Any claims against the State of Illinois under a  
11 self-insurance plan that are not settled pursuant to this  
12 subdivision (11) shall be heard and determined by the Court of  
13 Claims and may not be filed or adjudicated in any other forum.  
14 The Attorney General of the State of Illinois or the Attorney  
15 General's designee shall be the attorney with respect to all  
16 public liability self-insurance claims that are not settled  
17 pursuant to this subdivision (11) and therefore result in  
18 litigation. The payment of any award of the Court of Claims  
19 entered against the State relating to any public liability  
20 self-insurance claim shall act as a release against any State  
21 employee involved in the occurrence.

22 (12) Administer a plan the purpose of which is to make  
23 payments on final settlements or final judgments in accordance  
24 with the State Employee Indemnification Act. The plan shall be  
25 funded through appropriations from the General Revenue Fund  
26 specifically designated for that purpose, except that



1 indemnification expenses for employees of the Department of  
2 Transportation, the Illinois State Police, and the Secretary of  
3 State shall be paid from the Road Fund. The term "employee" as  
4 used in this subdivision (12) has the same meaning as under  
5 subsection (b) of Section 1 of the State Employee  
6 Indemnification Act. Subject to sufficient appropriation, the  
7 Director shall approve payment of any claim, without regard to  
8 fiscal year limitations, presented to the Director that is  
9 supported by a final settlement or final judgment when the  
10 Attorney General and the chief officer of the public body  
11 against whose employee the claim or cause of action is asserted  
12 certify to the Director that the claim is in accordance with  
13 the State Employee Indemnification Act and that they approve of  
14 the payment. In no event shall an amount in excess of \$150,000  
15 be paid from this plan to or for the benefit of any claimant.

16 (13) Administer a plan the purpose of which is to make  
17 payments on final settlements or final judgments for employee  
18 wage claims in situations where there was an appropriation  
19 relevant to the wage claim, the fiscal year and lapse period  
20 have expired, and sufficient funds were available to pay the  
21 claim. The plan shall be funded through appropriations from the  
22 General Revenue Fund specifically designated for that purpose.

23 Subject to sufficient appropriation, the Director is  
24 authorized to pay any wage claim presented to the Director that  
25 is supported by a final settlement or final judgment when the  
26 chief officer of the State agency employing the claimant

1 certifies to the Director that the claim is a valid wage claim  
2 and that the fiscal year and lapse period have expired. Payment  
3 for claims that are properly submitted and certified as valid  
4 by the Director shall include interest accrued at the rate of  
5 7% per annum from the forty-fifth day after the claims are  
6 received by the Department or 45 days from the date on which  
7 the amount of payment is agreed upon, whichever is later, until  
8 the date the claims are submitted to the Comptroller for  
9 payment. When the Attorney General has filed an appearance in  
10 any proceeding concerning a wage claim settlement or judgment,  
11 the Attorney General shall certify to the Director that the  
12 wage claim is valid before any payment is made. In no event  
13 shall an amount in excess of \$150,000 be paid from this plan to  
14 or for the benefit of any claimant.

15 Nothing in Public Act 84-961 shall be construed to affect  
16 in any manner the jurisdiction of the Court of Claims  
17 concerning wage claims made against the State of Illinois.

18 (14) Prepare and, in the discretion of the Director,  
19 implement a program for self-insurance for official fidelity  
20 and surety bonds for officers and employees as authorized by  
21 the Official Bond Act.

22 (Source: P.A. 93-839, eff. 7-30-04.)

23 Section 10. The State Finance Act is amended by changing  
24 Section 25 as follows:

1 (30 ILCS 105/25) (from Ch. 127, par. 161)

2 Sec. 25. Fiscal year limitations.

3 (a) All appropriations shall be available for expenditure  
4 for the fiscal year or for a lesser period if the Act making  
5 that appropriation so specifies. A deficiency or emergency  
6 appropriation shall be available for expenditure only through  
7 June 30 of the year when the Act making that appropriation is  
8 enacted unless that Act otherwise provides.

9 (b) Outstanding liabilities as of June 30, payable from  
10 appropriations which have otherwise expired, may be paid out of  
11 the expiring appropriations during the 2-month period ending at  
12 the close of business on August 31. Any service involving  
13 professional or artistic skills or any personal services by an  
14 employee whose compensation is subject to income tax  
15 withholding must be performed as of June 30 of the fiscal year  
16 in order to be considered an "outstanding liability as of June  
17 30" that is thereby eligible for payment out of the expiring  
18 appropriation.

19 However, payment of tuition reimbursement claims under  
20 Section 14-7.03 or 18-3 of the School Code may be made by the  
21 State Board of Education from its appropriations for those  
22 respective purposes for any fiscal year, even though the claims  
23 reimbursed by the payment may be claims attributable to a prior  
24 fiscal year, and payments may be made at the direction of the  
25 State Superintendent of Education from the fund from which the  
26 appropriation is made without regard to any fiscal year

1 limitations.

2 Medical payments may be made by the Department of Veterans'  
3 Affairs from its appropriations for those purposes for any  
4 fiscal year, without regard to the fact that the medical  
5 services being compensated for by such payment may have been  
6 rendered in a prior fiscal year.

7 Medical payments may be made by the Department of  
8 Healthcare and Family Services and medical payments and child  
9 care payments may be made by the Department of Human Services  
10 (as successor to the Department of Public Aid) from  
11 appropriations for those purposes for any fiscal year, without  
12 regard to the fact that the medical or child care services  
13 being compensated for by such payment may have been rendered in  
14 a prior fiscal year; and payments may be made at the direction  
15 of the Department of Central Management Services from the  
16 Health Insurance Reserve Fund and the Local Government Health  
17 Insurance Reserve Fund without regard to any fiscal year  
18 limitations.

19 Medical payments may be made by the Department of Human  
20 Services from its appropriations relating to substance abuse  
21 treatment services for any fiscal year, without regard to the  
22 fact that the medical services being compensated for by such  
23 payment may have been rendered in a prior fiscal year, provided  
24 the payments are made on a fee-for-service basis consistent  
25 with requirements established for Medicaid reimbursement by  
26 the Department of Healthcare and Family Services.

1           Additionally, payments may be made by the Department of  
2 Human Services from its appropriations, or any other State  
3 agency from its appropriations with the approval of the  
4 Department of Human Services, from the Immigration Reform and  
5 Control Fund for purposes authorized pursuant to the  
6 Immigration Reform and Control Act of 1986, without regard to  
7 any fiscal year limitations.

8           Further, with respect to costs incurred in fiscal years  
9 2002 and 2003 only, payments may be made by the State Treasurer  
10 from its appropriations from the Capital Litigation Trust Fund  
11 without regard to any fiscal year limitations.

12           Lease payments may be made by the Department of Central  
13 Management Services under the sale and leaseback provisions of  
14 Section 7.4 of the State Property Control Act with respect to  
15 the James R. Thompson Center and the Elgin Mental Health Center  
16 and surrounding land from appropriations for that purpose  
17 without regard to any fiscal year limitations.

18           Lease payments may be made under the sale and leaseback  
19 provisions of Section 7.5 of the State Property Control Act  
20 with respect to the Illinois State Toll Highway Authority  
21 headquarters building and surrounding land without regard to  
22 any fiscal year limitations.

23           Payments may be made in accordance with a plan authorized  
24 by paragraph (11) or (12) of Section 405-105 of the Department  
25 of Central Management Services Law from appropriations for  
26 those payments without regard to fiscal year limitations.

1           (c) Further, payments may be made by the Department of  
2 Public Health and the Department of Human Services (acting as  
3 successor to the Department of Public Health under the  
4 Department of Human Services Act) from their respective  
5 appropriations for grants for medical care to or on behalf of  
6 persons suffering from chronic renal disease, persons  
7 suffering from hemophilia, rape victims, and premature and  
8 high-mortality risk infants and their mothers and for grants  
9 for supplemental food supplies provided under the United States  
10 Department of Agriculture Women, Infants and Children  
11 Nutrition Program, for any fiscal year without regard to the  
12 fact that the services being compensated for by such payment  
13 may have been rendered in a prior fiscal year.

14           (d) The Department of Public Health and the Department of  
15 Human Services (acting as successor to the Department of Public  
16 Health under the Department of Human Services Act) shall each  
17 annually submit to the State Comptroller, Senate President,  
18 Senate Minority Leader, Speaker of the House, House Minority  
19 Leader, and the respective Chairmen and Minority Spokesmen of  
20 the Appropriations Committees of the Senate and the House, on  
21 or before December 31, a report of fiscal year funds used to  
22 pay for services provided in any prior fiscal year. This report  
23 shall document by program or service category those  
24 expenditures from the most recently completed fiscal year used  
25 to pay for services provided in prior fiscal years.

26           (e) The Department of Healthcare and Family Services, the

1 Department of Human Services (acting as successor to the  
2 Department of Public Aid), and the Department of Human Services  
3 making fee-for-service payments relating to substance abuse  
4 treatment services provided during a previous fiscal year shall  
5 each annually submit to the State Comptroller, Senate  
6 President, Senate Minority Leader, Speaker of the House, House  
7 Minority Leader, the respective Chairmen and Minority  
8 Spokesmen of the Appropriations Committees of the Senate and  
9 the House, on or before November 30, a report that shall  
10 document by program or service category those expenditures from  
11 the most recently completed fiscal year used to pay for (i)  
12 services provided in prior fiscal years and (ii) services for  
13 which claims were received in prior fiscal years.

14 (f) The Department of Human Services (as successor to the  
15 Department of Public Aid) shall annually submit to the State  
16 Comptroller, Senate President, Senate Minority Leader, Speaker  
17 of the House, House Minority Leader, and the respective  
18 Chairmen and Minority Spokesmen of the Appropriations  
19 Committees of the Senate and the House, on or before December  
20 31, a report of fiscal year funds used to pay for services  
21 (other than medical care) provided in any prior fiscal year.  
22 This report shall document by program or service category those  
23 expenditures from the most recently completed fiscal year used  
24 to pay for services provided in prior fiscal years.

25 (g) In addition, each annual report required to be  
26 submitted by the Department of Healthcare and Family Services

1 under subsection (e) shall include the following information  
2 with respect to the State's Medicaid program:

3 (1) Explanations of the exact causes of the variance  
4 between the previous year's estimated and actual  
5 liabilities.

6 (2) Factors affecting the Department of Healthcare and  
7 Family Services' liabilities, including but not limited to  
8 numbers of aid recipients, levels of medical service  
9 utilization by aid recipients, and inflation in the cost of  
10 medical services.

11 (3) The results of the Department's efforts to combat  
12 fraud and abuse.

13 (h) As provided in Section 4 of the General Assembly  
14 Compensation Act, any utility bill for service provided to a  
15 General Assembly member's district office for a period  
16 including portions of 2 consecutive fiscal years may be paid  
17 from funds appropriated for such expenditure in either fiscal  
18 year.

19 (i) An agency which administers a fund classified by the  
20 Comptroller as an internal service fund may issue rules for:

21 (1) billing user agencies in advance for payments or  
22 authorized inter-fund transfers based on estimated charges  
23 for goods or services;

24 (2) issuing credits, refunding through inter-fund  
25 transfers, or reducing future inter-fund transfers during  
26 the subsequent fiscal year for all user agency payments or



1 authorized inter-fund transfers received during the prior  
2 fiscal year which were in excess of the final amounts owed  
3 by the user agency for that period; and

4 (3) issuing catch-up billings to user agencies during  
5 the subsequent fiscal year for amounts remaining due when  
6 payments or authorized inter-fund transfers received from  
7 the user agency during the prior fiscal year were less than  
8 the total amount owed for that period.

9 User agencies are authorized to reimburse internal service  
10 funds for catch-up billings by vouchers drawn against their  
11 respective appropriations for the fiscal year in which the  
12 catch-up billing was issued or by increasing an authorized  
13 inter-fund transfer during the current fiscal year. For the  
14 purposes of this Act, "inter-fund transfers" means transfers  
15 without the use of the voucher-warrant process, as authorized  
16 by Section 9.01 of the State Comptroller Act.

17 (Source: P.A. 95-331, eff. 8-21-07.)

18 Section 99. Effective date. This Act takes effect upon  
19 becoming law.