



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5534

Introduced 2/15/2012, by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

20 ILCS 405/405-105

was 20 ILCS 405/64.1

Amends the Department of Central Management Services Law of the Civil Administrative Code of Illinois. Provides that the appeal of a decision by the Workers' Compensation Commission on compensability of a State employee's claim for workers' compensation benefits may be made to the circuit court.

LRB097 19296 PJG 64545 b

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
18 self-insurance plan for State property and prepare
19 estimates of the costs of reinsurance for risks beyond the
20 realistic limits of the 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

1 contracted 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
6 as 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
9 units of local government in programs for the centralized
10 purchase of insurance.

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

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

1 or controlled by the State but used by a State employee on
2 State business, in excess of liability covered by an
3 insurance policy obtained by the owner of the motor vehicle
4 or in excess of the dollar amounts that the Department
5 shall determine to be reasonable. Any contract of insurance
6 let under this Law shall be by bid in accordance with the
7 procedure set forth in the Illinois Purchasing Act. Any
8 provisions for self-insurance shall conform to subdivision
9 (11).

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

26 Subsequent to payment of a claim on behalf of an

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

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

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

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

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

1 Department for expenditures incurred in rendering the
2 service.

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

25 Beginning with fiscal year 1996, all amounts recovered
26 by the Department through subrogation in workers'

1 compensation and workers' occupational disease cases shall
2 be deposited into the Workers' Compensation Revolving Fund
3 created under this subdivision (9).

4 (10) Establish rules, procedures, and forms to be used
5 by State agencies in the administration and payment of
6 workers' compensation claims. The Department shall
7 initially evaluate and determine the compensability of any
8 injury that is the subject of a workers' compensation claim
9 and provide for the administration and payment of such a
10 claim for all State agencies. The appeal of a decision of
11 the Workers' Compensation Commission on compensability of
12 a State employee's claim for workers' compensation
13 benefits may be made to the circuit court. The Director may
14 delegate to any agency with the agreement of the agency
15 head the responsibility for evaluation, administration,
16 and payment of that agency's claims.

17 (10a) If the Director determines it would be in the
18 best interests of the State and its employees, prepare and
19 implement a plan providing for: (i) the purchase of
20 workers' compensation insurance for workers' compensation
21 liability; (ii) third-party administration of
22 self-insurance, in whole or in part, for workers'
23 compensation liability; or (iii) a combination of
24 purchased insurance and self-insurance for workers'
25 compensation liability, including reinsurance or stop-loss
26 insurance. Any contract for insurance or third-party

1 administration shall be on terms consistent with State
2 policy; awarded in compliance with the Illinois
3 Procurement Code; and based on, but not limited to, the
4 following criteria: administrative cost, service
5 capabilities of the carrier or other contractor and
6 premiums, fees, or charges. By April 1 of each year, the
7 Director must report and provide information to the State
8 Workers' Compensation Program Advisory Board concerning
9 the status of the State workers' compensation program for
10 the next fiscal year. Information includes, but is not
11 limited to, documents, reports of negotiations, bid
12 invitations, requests for proposals, specifications,
13 copies of proposed and final contracts or agreements, and
14 any other materials concerning contracts or agreements for
15 the program. By the first of each month thereafter, the
16 Director must provide updated, and any new, information to
17 the State Workers' Compensation Program Advisory Board
18 until the State workers' compensation program for the next
19 fiscal year is determined.

20 (11) Any plan for public liability self-insurance
21 implemented under this Section shall provide that (i) the
22 Department shall attempt to settle and may settle any
23 public liability claim filed against the State of Illinois
24 or any public liability claim filed against a State
25 employee on the basis of an occurrence in the course of the
26 employee's State employment; (ii) any settlement of such a

1 claim is not subject to fiscal year limitations and must be
2 approved by the Director and, in cases of settlements
3 exceeding \$100,000, by the Governor; and (iii) a settlement
4 of any public liability claim against the State or a State
5 employee shall require an unqualified release of any right
6 of action against the State and the employee for acts
7 within the scope of the employee's employment giving rise
8 to the claim.

9 Whenever and to the extent that a State employee
10 operates a motor vehicle or engages in other activity
11 covered by self-insurance under this Section, the State of
12 Illinois shall defend, indemnify, and hold harmless the
13 employee against any claim in tort filed against the
14 employee for acts or omissions within the scope of the
15 employee's employment in any proper judicial forum and not
16 settled pursuant to this subdivision (11), provided that
17 this obligation of the State of Illinois shall not exceed a
18 maximum liability of \$2,000,000 for any single occurrence
19 in connection with the operation of a motor vehicle or
20 \$100,000 per person per occurrence for any other single
21 occurrence, or \$500,000 for any single occurrence in
22 connection with the provision of medical care by a licensed
23 physician employee.

24 Any claims against the State of Illinois under a
25 self-insurance plan that are not settled pursuant to this
26 subdivision (11) shall be heard and determined by the Court

1 of Claims and may not be filed or adjudicated in any other
2 forum. The Attorney General of the State of Illinois or the
3 Attorney General's designee shall be the attorney with
4 respect to all public liability self-insurance claims that
5 are not settled pursuant to this subdivision (11) and
6 therefore result in litigation. The payment of any award of
7 the Court of Claims entered against the State relating to
8 any public liability self-insurance claim shall act as a
9 release against any State employee involved in the
10 occurrence.

11 (12) Administer a plan the purpose of which is to make
12 payments on final settlements or final judgments in
13 accordance with the State Employee Indemnification Act.
14 The plan shall be funded through appropriations from the
15 General Revenue Fund specifically designated for that
16 purpose, except that indemnification expenses for
17 employees of the Department of Transportation, the
18 Illinois State Police, and the Secretary of State shall be
19 paid from the Road Fund. The term "employee" as used in
20 this subdivision (12) has the same meaning as under
21 subsection (b) of Section 1 of the State Employee
22 Indemnification Act. Subject to sufficient appropriation,
23 the Director shall approve payment of any claim, without
24 regard to fiscal year limitations, presented to the
25 Director that is supported by a final settlement or final
26 judgment when the Attorney General and the chief officer of

1 the public body against whose employee the claim or cause
2 of action is asserted certify to the Director that the
3 claim is in accordance with the State Employee
4 Indemnification Act and that they approve of the payment.
5 In no event shall an amount in excess of \$150,000 be paid
6 from this plan to or for the benefit of any claimant.

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

15 Subject to sufficient appropriation, the Director is
16 authorized to pay any wage claim presented to the Director
17 that is supported by a final settlement or final judgment
18 when the chief officer of the State agency employing the
19 claimant certifies to the Director that the claim is a
20 valid wage claim and that the fiscal year and lapse period
21 have expired. Payment for claims that are properly
22 submitted and certified as valid by the Director shall
23 include interest accrued at the rate of 7% per annum from
24 the forty-fifth day after the claims are received by the
25 Department or 45 days from the date on which the amount of
26 payment is agreed upon, whichever is later, until the date

1 the claims are submitted to the Comptroller for payment.
2 When the Attorney General has filed an appearance in any
3 proceeding concerning a wage claim settlement or judgment,
4 the Attorney General shall certify to the Director that the
5 wage claim is valid before any payment is made. In no event
6 shall an amount in excess of \$150,000 be paid from this
7 plan to or for the benefit of any claimant.

8 Nothing in Public Act 84-961 shall be construed to
9 affect in any manner the jurisdiction of the Court of
10 Claims concerning wage claims made against the State of
11 Illinois.

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

16 (Source: P.A. 96-928, eff. 6-15-10; 97-18, eff. 6-28-11.)