



Sen. John J. Cullerton

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LRB095 05388 JAM 48781 a

1 AMENDMENT TO SENATE BILL 751

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 751 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The State Employee Indemnification Act is  
5 amended by changing Sections 1 and 2 as follows:

6 (5 ILCS 350/1) (from Ch. 127, par. 1301)

7 Sec. 1. Definitions. For the purpose of this Act:

8 (a) The term "State" means the State of Illinois, the  
9 General Assembly, the court, or any State office, department,  
10 division, bureau, board, commission, or committee, the  
11 governing boards of the public institutions of higher education  
12 created by the State, the Illinois National Guard, the  
13 Comprehensive Health Insurance Board, any poison control  
14 center designated under the Poison Control System Act that  
15 receives State funding, or any other agency or instrumentality  
16 of the State. It does not mean any local public entity as that

1 term is defined in Section 1-206 of the Local Governmental and  
2 Governmental Employees Tort Immunity Act or a pension fund.

3 (b) The term "employee" means any present or former elected  
4 or appointed officer, trustee or employee of the State, or of a  
5 pension fund, any present or former commissioner or employee of  
6 the Executive Ethics Commission or of the Legislative Ethics  
7 Commission, any present or former Executive, Legislative, or  
8 Auditor General's Inspector General, any present or former  
9 employee of an Office of an Executive, Legislative, or Auditor  
10 General's Inspector General, any present or former member of  
11 the Illinois National Guard while on active duty, individuals  
12 or organizations who contract with the Department of  
13 Corrections, the Department of Juvenile Justice, the  
14 Comprehensive Health Insurance Board, or the Department of  
15 Veterans' Affairs to provide services, individuals or  
16 organizations who contract with the Department of Human  
17 Services (as successor to the Department of Mental Health and  
18 Developmental Disabilities) to provide services including but  
19 not limited to treatment and other services for sexually  
20 violent persons, individuals or organizations who contract  
21 with the Department of Military Affairs for youth programs,  
22 individuals or organizations who contract to perform carnival  
23 and amusement ride safety inspections for the Department of  
24 Labor, individual representatives of or designated  
25 organizations authorized to represent the Office of State  
26 Long-Term Ombudsman for the Department on Aging, individual

1 representatives of or organizations designated by the  
2 Department on Aging in the performance of their duties as elder  
3 abuse provider agencies or regional administrative agencies  
4 under the Elder Abuse and Neglect Act, individuals or  
5 organizations who perform volunteer services for the State  
6 where such volunteer relationship is reduced to writing,  
7 individuals who serve on any public entity (whether created by  
8 law or administrative action) described in paragraph (a) of  
9 this Section, individuals or not for profit organizations who,  
10 either as volunteers, where such volunteer relationship is  
11 reduced to writing, or pursuant to contract, furnish  
12 professional advice or consultation to any agency or  
13 instrumentality of the State, individuals who serve as foster  
14 parents for the Department of Children and Family Services when  
15 caring for a Department ward, and individuals who serve as  
16 arbitrators pursuant to Part 10A of Article II of the Code of  
17 Civil Procedure and the rules of the Supreme Court implementing  
18 Part 10A, each as now or hereafter amended, but does not mean  
19 an independent contractor except as provided in this Section.  
20 The term includes an individual appointed as an inspector by  
21 the Director of State Police when performing duties within the  
22 scope of the activities of a Metropolitan Enforcement Group or  
23 a law enforcement organization established under the  
24 Intergovernmental Cooperation Act. An individual who renders  
25 professional advice and consultation to the State through an  
26 organization which qualifies as an "employee" under the Act is

1 also an employee. The term includes the estate or personal  
2 representative of an employee.

3 (c) The term "pension fund" means a retirement system or  
4 pension fund created under the Illinois Pension Code.

5 (Source: P.A. 93-617, eff. 12-9-03.)

6 (5 ILCS 350/2) (from Ch. 127, par. 1302)

7 Sec. 2. Representation and indemnification of State  
8 employees.

9 (a) In the event that any civil proceeding is commenced  
10 against any State employee arising out of any act or omission  
11 occurring within the scope of the employee's State employment,  
12 the Attorney General shall, upon timely and appropriate notice  
13 to him by such employee, appear on behalf of such employee and  
14 defend the action. In the event that any civil proceeding is  
15 commenced against any physician who is an employee of the  
16 Department of Corrections, the Department of Juvenile Justice,  
17 or the Department of Human Services (in a position relating to  
18 the Department's mental health and developmental disabilities  
19 functions) alleging death or bodily injury or other injury to  
20 the person of the complainant resulting from and arising out of  
21 any act or omission occurring on or after December 3, 1977  
22 within the scope of the employee's State employment, or against  
23 any physician who is an employee of the Department of Veterans'  
24 Affairs alleging death or bodily injury or other injury to the  
25 person of the complainant resulting from and arising out of any

1 act or omission occurring on or after the effective date of  
2 this amendatory Act of 1988 within the scope of the employee's  
3 State employment, or in the event that any civil proceeding is  
4 commenced against any attorney who is an employee of the State  
5 Appellate Defender alleging legal malpractice or for other  
6 damages resulting from and arising out of any legal act or  
7 omission occurring on or after December 3, 1977, within the  
8 scope of the employee's State employment, or in the event that  
9 any civil proceeding is commenced against any individual or  
10 organization who contracts with the Department of Labor to  
11 provide services as a carnival and amusement ride safety  
12 inspector alleging malpractice, death or bodily injury or other  
13 injury to the person arising out of any act or omission  
14 occurring on or after May 1, 1985, within the scope of that  
15 employee's State employment, the Attorney General shall, upon  
16 timely and appropriate notice to him by such employee, appear  
17 on behalf of such employee and defend the action. Any such  
18 notice shall be in writing, shall be mailed within 15 days  
19 after the date of receipt by the employee of service of  
20 process, and shall authorize the Attorney General to represent  
21 and defend the employee in the proceeding. The giving of this  
22 notice to the Attorney General shall constitute an agreement by  
23 the State employee to cooperate with the Attorney General in  
24 his defense of the action and a consent that the Attorney  
25 General shall conduct the defense as he deems advisable and in  
26 the best interests of the employee, including settlement in the

1 Attorney General's discretion. In any such proceeding, the  
2 State shall pay the court costs and litigation expenses of  
3 defending such action, to the extent approved by the Attorney  
4 General as reasonable, as they are incurred.

5 (b) In the event that the Attorney General determines that  
6 so appearing and defending an employee either (1) involves an  
7 actual or potential conflict of interest, or (2) that the act  
8 or omission which gave rise to the claim was not within the  
9 scope of the employee's State employment or was intentional,  
10 wilful or wanton misconduct, the Attorney General shall decline  
11 in writing to appear or defend or shall promptly take  
12 appropriate action to withdraw as attorney for such employee.  
13 Upon receipt of such declination or upon such withdrawal by the  
14 Attorney General on the basis of an actual or potential  
15 conflict of interest, the State employee may employ his own  
16 attorney to appear and defend, in which event the State shall  
17 pay the employee's court costs, litigation expenses and  
18 attorneys' fees to the extent approved by the Attorney General  
19 as reasonable, as they are incurred. In the event that the  
20 Attorney General declines to appear or withdraws on the grounds  
21 that the act or omission was not within the scope of  
22 employment, or was intentional, wilful or wanton misconduct,  
23 and a court or jury finds that the act or omission of the State  
24 employee was within the scope of employment and was not  
25 intentional, wilful or wanton misconduct, the State shall  
26 indemnify the State employee for any damages awarded and court

1 costs and attorneys' fees assessed as part of any final and  
2 unreversed judgment. In such event the State shall also pay the  
3 employee's court costs, litigation expenses and attorneys'  
4 fees to the extent approved by the Attorney General as  
5 reasonable.

6 In the event that the defendant in the proceeding is an  
7 elected State official, including members of the General  
8 Assembly, the elected State official may retain his or her  
9 attorney, provided that said attorney shall be reasonably  
10 acceptable to the Attorney General. In such case the State  
11 shall pay the elected State official's court costs, litigation  
12 expenses, and attorneys' fees, to the extent approved by the  
13 Attorney General as reasonable, as they are incurred.

14 (b-5) The Attorney General may file a counterclaim on  
15 behalf of a State employee, provided:

16 (1) the Attorney General determines that the State  
17 employee is entitled to representation in a civil action  
18 under this Section;

19 (2) the counterclaim arises out of any act or omission  
20 occurring within the scope of the employee's State  
21 employment that is the subject of the civil action; and

22 (3) the employee agrees in writing that if judgment is  
23 entered in favor of the employee, the amount of the  
24 judgment shall be applied to offset any judgment that may  
25 be entered in favor of the plaintiff, and then to reimburse  
26 the State treasury for court costs and litigation expenses

1 required to pursue the counterclaim. The balance of the  
2 collected judgment shall be paid to the State employee.

3 (c) Notwithstanding any other provision of this Section,  
4 representation and indemnification of a judge under this Act  
5 shall also be provided in any case where the plaintiff seeks  
6 damages or any equitable relief as a result of any decision,  
7 ruling or order of a judge made in the course of his or her  
8 judicial or administrative duties, without regard to the theory  
9 of recovery employed by the plaintiff. Indemnification shall be  
10 for all damages awarded and all court costs, attorney fees and  
11 litigation expenses assessed against the judge. When a judge  
12 has been convicted of a crime as a result of his or her  
13 intentional judicial misconduct in a trial, that judge shall  
14 not be entitled to indemnification and representation under  
15 this subsection in any case maintained by a party who seeks  
16 damages or other equitable relief as a direct result of the  
17 judge's intentional judicial misconduct.

18 (d) In any such proceeding where notice in accordance with  
19 this Section has been given to the Attorney General, unless the  
20 court or jury finds that the conduct or inaction which gave  
21 rise to the claim or cause of action was intentional, wilful or  
22 wanton misconduct and was not intended to serve or benefit  
23 interests of the State, the State shall indemnify the State  
24 employee for any damages awarded and court costs and attorneys'  
25 fees assessed as part of any final and unreversed judgment, or  
26 shall pay such judgment. Unless the Attorney General determines



1 that the conduct or inaction which gave rise to the claim or  
2 cause of action was intentional, wilful or wanton misconduct  
3 and was not intended to serve or benefit interests of the  
4 State, the case may be settled, in the Attorney General's  
5 discretion and with the employee's consent, and the State shall  
6 indemnify the employee for any damages, court costs and  
7 attorneys' fees agreed to as part of the settlement, or shall  
8 pay such settlement. Where the employee is represented by  
9 private counsel, any settlement must be so approved by the  
10 Attorney General and the court having jurisdiction, which shall  
11 obligate the State to indemnify the employee.

12 (e) (i) Court costs and litigation expenses and other costs  
13 of providing a defense or counterclaim, including attorneys'  
14 fees obligated under this Section, shall be paid from the State  
15 Treasury on the warrant of the Comptroller out of  
16 appropriations made to the Department of Central Management  
17 Services specifically designed for the payment of costs, fees  
18 and expenses covered by this Section.

19 (ii) Upon entry of a final judgment against the employee,  
20 or upon the settlement of the claim, the employee shall cause  
21 to be served a copy of such judgment or settlement, personally  
22 or by certified or registered mail within thirty days of the  
23 date of entry or settlement, upon the chief administrative  
24 officer of the department, office or agency in which he is  
25 employed. If not inconsistent with the provisions of this  
26 Section, such judgment or settlement shall be certified for

1 payment by such chief administrative officer and by the  
2 Attorney General. The judgment or settlement shall be paid from  
3 the State Treasury on the warrant of the Comptroller out of  
4 appropriations made to the Department of Central Management  
5 Services specifically designed for the payment of claims  
6 covered by this Section.

7 (f) Nothing contained or implied in this Section shall  
8 operate, or be construed or applied, to deprive the State, or  
9 any employee thereof, of any defense heretofore available.

10 (g) This Section shall apply regardless of whether the  
11 employee is sued in his or her individual or official capacity.

12 (h) This Section shall not apply to claims for bodily  
13 injury or damage to property arising from motor vehicle  
14 accidents.

15 (i) This Section shall apply to all proceedings filed on or  
16 after its effective date, and to any proceeding pending on its  
17 effective date, if the State employee gives notice to the  
18 Attorney General as provided in this Section within 30 days of  
19 the Act's effective date.

20 (j) The amendatory changes made to this Section by this  
21 amendatory Act of 1986 shall apply to all proceedings filed on  
22 or after the effective date of this amendatory Act of 1986 and  
23 to any proceeding pending on its effective date, if the State  
24 employee gives notice to the Attorney General as provided in  
25 this Section within 30 days of the effective date of this  
26 amendatory Act of 1986.

1           (k) This Act applies to all State officials who are serving  
2 as trustees, or their appointing authorities, of a clean energy  
3 community trust or as members of a not-for-profit foundation or  
4 corporation established pursuant to Section 16-111.1 of the  
5 Public Utilities Act.

6 (Source: P.A. 90-655, eff. 7-30-98; 91-781, eff. 6-9-00.)".