



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4594

by Rep. Kathleen A. Ryg

SYNOPSIS AS INTRODUCED:

5 ILCS 100/1-100 new	
5 ILCS 100/5-45	from Ch. 127, par. 1005-45
20 ILCS 405/405-105	was 20 ILCS 405/64.1
30 ILCS 608/Act rep.	

Creates the Government Services Emergency Budget Implementation Act of 2009. Amends the Illinois Administrative Procedure Act to authorize emergency rulemaking that is not subject to complete JCAR oversight and to suspend rules while duties under a statute are suspended. Amends the Department of Central Management Services Law of the Civil Administrative Code of Illinois. Provides that the Department, without regard to fiscal year limitations, may settle any public liability self-insurance claim or pay any State employee indemnification claim. Repeals the State Facilities Closure Act. Contains a severability clause. Effective immediately.

LRB096 13378 JAM 28096 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning budget implementation.

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

4 Section 1. Short title. This Act may be cited as the
5 Government Services Emergency Budget Implementation Act of
6 2009.

7 Section 5. Legislative intent. The General Assembly hereby
8 finds and declares that the State is confronted with an
9 unprecedented fiscal crisis. This Act is to be liberally
10 construed and interpreted in a manner that allows the State to
11 address the fiscal crisis for the fiscal year ending June 30,
12 2010.

13 Section 10. The Illinois Administrative Procedure Act is
14 amended by changing Section 5-45 and by adding Section 1-100 as
15 follows:

16 (5 ILCS 100/1-100 new)

17 Sec. 1-100. Suspension of existing rules. During the period
18 July 1, 2009 through June 30, 2010, a State agency shall not
19 enforce rules that implement or are authorized by a statute to
20 the extent that the duties under that statute have been
21 suspended by law by the General Assembly or by Executive Order

1 of the Governor during that same time period. If the suspension
2 of the duties under a statute is terminated or revoked during
3 the period July 1, 2009 through June 30, 2010, the State agency
4 shall enforce the rules upon the termination or revocation of
5 the suspension.

6 (5 ILCS 100/5-45) (from Ch. 127, par. 1005-45)

7 Sec. 5-45. Emergency rulemaking.

8 (a) "Emergency" means the existence of any situation that
9 any agency finds reasonably constitutes a threat to the public
10 interest, safety, or welfare.

11 (b) If any agency finds that an emergency exists that
12 requires adoption of a rule upon fewer days than is required by
13 Section 5-40 and states in writing its reasons for that
14 finding, the agency may adopt an emergency rule without prior
15 notice or hearing upon filing a notice of emergency rulemaking
16 with the Secretary of State under Section 5-70. The notice
17 shall include the text of the emergency rule and shall be
18 published in the Illinois Register. Consent orders or other
19 court orders adopting settlements negotiated by an agency may
20 be adopted under this Section. Subject to applicable
21 constitutional or statutory provisions, an emergency rule
22 becomes effective immediately upon filing under Section 5-65 or
23 at a stated date less than 10 days thereafter. The agency's
24 finding and a statement of the specific reasons for the finding
25 shall be filed with the rule. The agency shall take reasonable

1 and appropriate measures to make emergency rules known to the
2 persons who may be affected by them.

3 (c) An emergency rule may be effective for a period of not
4 longer than 150 days, but the agency's authority to adopt an
5 identical rule under Section 5-40 is not precluded. No
6 emergency rule may be adopted more than once in any 24 month
7 period, except that this limitation on the number of emergency
8 rules that may be adopted in a 24 month period does not apply
9 to (i) emergency rules that make additions to and deletions
10 from the Drug Manual under Section 5-5.16 of the Illinois
11 Public Aid Code or the generic drug formulary under Section
12 3.14 of the Illinois Food, Drug and Cosmetic Act, (ii)
13 emergency rules adopted by the Pollution Control Board before
14 July 1, 1997 to implement portions of the Livestock Management
15 Facilities Act, or (iii) emergency rules adopted by the
16 Illinois Department of Public Health under subsections (a)
17 through (i) of Section 2 of the Department of Public Health Act
18 when necessary to protect the public's health. Two or more
19 emergency rules having substantially the same purpose and
20 effect shall be deemed to be a single rule for purposes of this
21 Section.

22 (d) In order to provide for the expeditious and timely
23 implementation of the State's fiscal year 1999 budget,
24 emergency rules to implement any provision of Public Act 90-587
25 or 90-588 or any other budget initiative for fiscal year 1999
26 may be adopted in accordance with this Section by the agency

1 charged with administering that provision or initiative,
2 except that the 24-month limitation on the adoption of
3 emergency rules and the provisions of Sections 5-115 and 5-125
4 do not apply to rules adopted under this subsection (d). The
5 adoption of emergency rules authorized by this subsection (d)
6 shall be deemed to be necessary for the public interest,
7 safety, and welfare.

8 (e) In order to provide for the expeditious and timely
9 implementation of the State's fiscal year 2000 budget,
10 emergency rules to implement any provision of this amendatory
11 Act of the 91st General Assembly or any other budget initiative
12 for fiscal year 2000 may be adopted in accordance with this
13 Section by the agency charged with administering that provision
14 or initiative, except that the 24-month limitation on the
15 adoption of emergency rules and the provisions of Sections
16 5-115 and 5-125 do not apply to rules adopted under this
17 subsection (e). The adoption of emergency rules authorized by
18 this subsection (e) shall be deemed to be necessary for the
19 public interest, safety, and welfare.

20 (f) In order to provide for the expeditious and timely
21 implementation of the State's fiscal year 2001 budget,
22 emergency rules to implement any provision of this amendatory
23 Act of the 91st General Assembly or any other budget initiative
24 for fiscal year 2001 may be adopted in accordance with this
25 Section by the agency charged with administering that provision
26 or initiative, except that the 24-month limitation on the

1 adoption of emergency rules and the provisions of Sections
2 5-115 and 5-125 do not apply to rules adopted under this
3 subsection (f). The adoption of emergency rules authorized by
4 this subsection (f) shall be deemed to be necessary for the
5 public interest, safety, and welfare.

6 (g) In order to provide for the expeditious and timely
7 implementation of the State's fiscal year 2002 budget,
8 emergency rules to implement any provision of this amendatory
9 Act of the 92nd General Assembly or any other budget initiative
10 for fiscal year 2002 may be adopted in accordance with this
11 Section by the agency charged with administering that provision
12 or initiative, except that the 24-month limitation on the
13 adoption of emergency rules and the provisions of Sections
14 5-115 and 5-125 do not apply to rules adopted under this
15 subsection (g). The adoption of emergency rules authorized by
16 this subsection (g) shall be deemed to be necessary for the
17 public interest, safety, and welfare.

18 (h) In order to provide for the expeditious and timely
19 implementation of the State's fiscal year 2003 budget,
20 emergency rules to implement any provision of this amendatory
21 Act of the 92nd General Assembly or any other budget initiative
22 for fiscal year 2003 may be adopted in accordance with this
23 Section by the agency charged with administering that provision
24 or initiative, except that the 24-month limitation on the
25 adoption of emergency rules and the provisions of Sections
26 5-115 and 5-125 do not apply to rules adopted under this

1 subsection (h). The adoption of emergency rules authorized by
2 this subsection (h) shall be deemed to be necessary for the
3 public interest, safety, and welfare.

4 (i) In order to provide for the expeditious and timely
5 implementation of the State's fiscal year 2004 budget,
6 emergency rules to implement any provision of this amendatory
7 Act of the 93rd General Assembly or any other budget initiative
8 for fiscal year 2004 may be adopted in accordance with this
9 Section by the agency charged with administering that provision
10 or initiative, except that the 24-month limitation on the
11 adoption of emergency rules and the provisions of Sections
12 5-115 and 5-125 do not apply to rules adopted under this
13 subsection (i). The adoption of emergency rules authorized by
14 this subsection (i) shall be deemed to be necessary for the
15 public interest, safety, and welfare.

16 (j) In order to provide for the expeditious and timely
17 implementation of the provisions of the State's fiscal year
18 2005 budget as provided under the Fiscal Year 2005 Budget
19 Implementation (Human Services) Act, emergency rules to
20 implement any provision of the Fiscal Year 2005 Budget
21 Implementation (Human Services) Act may be adopted in
22 accordance with this Section by the agency charged with
23 administering that provision, except that the 24-month
24 limitation on the adoption of emergency rules and the
25 provisions of Sections 5-115 and 5-125 do not apply to rules
26 adopted under this subsection (j). The Department of Public Aid

1 may also adopt rules under this subsection (j) necessary to
2 administer the Illinois Public Aid Code and the Children's
3 Health Insurance Program Act. The adoption of emergency rules
4 authorized by this subsection (j) shall be deemed to be
5 necessary for the public interest, safety, and welfare.

6 (k) In order to provide for the expeditious and timely
7 implementation of the provisions of the State's fiscal year
8 2006 budget, emergency rules to implement any provision of this
9 amendatory Act of the 94th General Assembly or any other budget
10 initiative for fiscal year 2006 may be adopted in accordance
11 with this Section by the agency charged with administering that
12 provision or initiative, except that the 24-month limitation on
13 the adoption of emergency rules and the provisions of Sections
14 5-115 and 5-125 do not apply to rules adopted under this
15 subsection (k). The Department of Healthcare and Family
16 Services may also adopt rules under this subsection (k)
17 necessary to administer the Illinois Public Aid Code, the
18 Senior Citizens and Disabled Persons Property Tax Relief and
19 Pharmaceutical Assistance Act, the Senior Citizens and
20 Disabled Persons Prescription Drug Discount Program Act (now
21 the Illinois Prescription Drug Discount Program Act), and the
22 Children's Health Insurance Program Act. The adoption of
23 emergency rules authorized by this subsection (k) shall be
24 deemed to be necessary for the public interest, safety, and
25 welfare.

26 (l) In order to provide for the expeditious and timely

1 implementation of the provisions of the State's fiscal year
2 2007 budget, the Department of Healthcare and Family Services
3 may adopt emergency rules during fiscal year 2007, including
4 rules effective July 1, 2007, in accordance with this
5 subsection to the extent necessary to administer the
6 Department's responsibilities with respect to amendments to
7 the State plans and Illinois waivers approved by the federal
8 Centers for Medicare and Medicaid Services necessitated by the
9 requirements of Title XIX and Title XXI of the federal Social
10 Security Act. The adoption of emergency rules authorized by
11 this subsection (l) shall be deemed to be necessary for the
12 public interest, safety, and welfare.

13 (m) In order to provide for the expeditious and timely
14 implementation of the provisions of the State's fiscal year
15 2008 budget, the Department of Healthcare and Family Services
16 may adopt emergency rules during fiscal year 2008, including
17 rules effective July 1, 2008, in accordance with this
18 subsection to the extent necessary to administer the
19 Department's responsibilities with respect to amendments to
20 the State plans and Illinois waivers approved by the federal
21 Centers for Medicare and Medicaid Services necessitated by the
22 requirements of Title XIX and Title XXI of the federal Social
23 Security Act. The adoption of emergency rules authorized by
24 this subsection (m) shall be deemed to be necessary for the
25 public interest, safety, and welfare.

26 (n) In order to provide for the expeditious and timely

1 implementation of the State's fiscal year 2010 budget,
2 emergency rules to implement any provision of this amendatory
3 Act of the 96th General Assembly or any other budget initiative
4 for fiscal year 2010 may be adopted in accordance with this
5 Section by the agency charged with administering that provision
6 or initiative, except that the 24-month limitation on the
7 adoption of emergency rules and the provisions of Sections
8 5-115 and 5-125 do not apply to rules adopted under this
9 subsection (n). The adoption of emergency rules authorized by
10 this subsection (n) shall be deemed to be necessary for the
11 public interest, safety, and welfare.

12 (Source: P.A. 94-48, eff. 7-1-05; 94-838, eff. 6-6-06; 95-12,
13 eff. 7-2-07; 95-331, eff. 8-21-07.)

14 Section 15. The Department of Central Management Services
15 Law of the Civil Administrative Code of Illinois is amended by
16 changing Section 405-105 as follows:

17 (20 ILCS 405/405-105) (was 20 ILCS 405/64.1)

18 Sec. 405-105. Fidelity, surety, property, and casualty
19 insurance. The Department shall establish and implement a
20 program to coordinate the handling of all fidelity, surety,
21 property, and casualty insurance exposures of the State and the
22 departments, divisions, agencies, branches, and universities
23 of the State. In performing this responsibility, the Department
24 shall have the power and duty to do the following:

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

3 (2) Study the feasibility of establishing a self-insurance
4 plan for State property and prepare estimates of the costs of
5 reinsurance for risks beyond the realistic limits of the
6 self-insurance.

7 (3) Prepare a plan for centralizing the purchase of
8 property and casualty insurance on State property under a
9 master policy or policies and purchase the insurance contracted
10 for as provided in the Illinois Purchasing Act.

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

16 (5) Investigate procedures for inclusion of school
17 districts, public community college districts, and other units
18 of local government in programs for the centralized purchase of
19 insurance.

20 (6) Implement recommendations of the State Property
21 Insurance Study Commission that the Department finds necessary
22 or desirable in the performance of its powers and duties under
23 this Section to achieve efficient and comprehensive risk
24 management.

25 (7) Prepare and, in the discretion of the Director,
26 implement a plan providing for the purchase of public liability

1 insurance or for self-insurance for public liability or for a
2 combination of purchased insurance and self-insurance for
3 public liability (i) covering the State and drivers of motor
4 vehicles owned, leased, or controlled by the State of Illinois
5 pursuant to the provisions and limitations contained in the
6 Illinois Vehicle Code, (ii) covering other public liability
7 exposures of the State and its employees within the scope of
8 their employment, and (iii) covering drivers of motor vehicles
9 not owned, leased, or controlled by the State but used by a
10 State employee on State business, in excess of liability
11 covered by an insurance policy obtained by the owner of the
12 motor vehicle or in excess of the dollar amounts that the
13 Department shall determine to be reasonable. Any contract of
14 insurance let under this Law shall be by bid in accordance with
15 the procedure set forth in the Illinois Purchasing Act. Any
16 provisions for self-insurance shall conform to subdivision
17 (11).

18 The term "employee" as used in this subdivision (7) and in
19 subdivision (11) means a person while in the employ of the
20 State who is a member of the staff or personnel of a State
21 agency, bureau, board, commission, committee, department,
22 university, or college or who is a State officer, elected
23 official, commissioner, member of or ex officio member of a
24 State agency, bureau, board, commission, committee,
25 department, university, or college, or a member of the National
26 Guard while on active duty pursuant to orders of the Governor

1 of the State of Illinois, or any other person while using a
2 licensed motor vehicle owned, leased, or controlled by the
3 State of Illinois with the authorization of the State of
4 Illinois, provided the actual use of the motor vehicle is
5 within the scope of that authorization and within the course of
6 State service.

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

18 The Director is authorized to promulgate administrative
19 rules that may be necessary to establish and administer the
20 plan.

21 Appropriations from the Road Fund shall be used to pay auto
22 liability claims and related expenses involving employees of
23 the Department of Transportation, the Illinois State Police,
24 and the Secretary of State.

25 (8) Charge, collect, and receive from all other agencies of
26 the State government fees or monies equivalent to the cost of

1 purchasing the insurance.

2 (9) Establish, through the Director, charges for risk
3 management services rendered to State agencies by the
4 Department. The State agencies so charged shall reimburse the
5 Department by vouchers drawn against their respective
6 appropriations. The reimbursement shall be determined by the
7 Director as amounts sufficient to reimburse the Department for
8 expenditures incurred in rendering the service.

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

1 other temporary total disability claims of employees of State
2 agencies and universities.

3 Beginning with fiscal year 1996, all amounts recovered by
4 the Department through subrogation in workers' compensation
5 and workers' occupational disease cases shall be deposited into
6 the Workers' Compensation Revolving Fund created under this
7 subdivision (9).

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

17 (11) Any plan for public liability self-insurance
18 implemented under this Section shall provide that (i) the
19 Department shall attempt to settle and may settle any public
20 liability claim filed against the State of Illinois or any
21 public liability claim filed against a State employee on the
22 basis of an occurrence in the course of the employee's State
23 employment; (ii) any settlement of such a claim is not subject
24 to fiscal year limitations and must be approved by the Director
25 and, in cases of settlements exceeding \$100,000, by the
26 Governor; and (iii) a settlement of any public liability claim

1 against the State or a State employee shall require an
2 unqualified release of any right of action against the State
3 and the employee for acts within the scope of the employee's
4 employment giving rise to the claim.

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

19 Any claims against the State of Illinois under a
20 self-insurance plan that are not settled pursuant to this
21 subdivision (11) shall be heard and determined by the Court of
22 Claims and may not be filed or adjudicated in any other forum.
23 The Attorney General of the State of Illinois or the Attorney
24 General's designee shall be the attorney with respect to all
25 public liability self-insurance claims that are not settled
26 pursuant to this subdivision (11) and therefore result in

1 litigation. The payment of any award of the Court of Claims
2 entered against the State relating to any public liability
3 self-insurance claim shall act as a release against any State
4 employee involved in the occurrence.

5 (12) Administer a plan the purpose of which is to make
6 payments on final settlements or final judgments in accordance
7 with the State Employee Indemnification Act. The plan shall be
8 funded through appropriations from the General Revenue Fund
9 specifically designated for that purpose, except that
10 indemnification expenses for employees of the Department of
11 Transportation, the Illinois State Police, and the Secretary of
12 State shall be paid from the Road Fund. The term "employee" as
13 used in this subdivision (12) has the same meaning as under
14 subsection (b) of Section 1 of the State Employee
15 Indemnification Act. Subject to sufficient appropriation, the
16 Director shall approve payment of any claim, without regard to
17 fiscal year limitations, presented to the Director that is
18 supported by a final settlement or final judgment when the
19 Attorney General and the chief officer of the public body
20 against whose employee the claim or cause of action is asserted
21 certify to the Director that the claim is in accordance with
22 the State Employee Indemnification Act and that they approve of
23 the payment. In no event shall an amount in excess of \$150,000
24 be paid from this plan to or for the benefit of any claimant.

25 (13) Administer a plan the purpose of which is to make
26 payments on final settlements or final judgments for employee

1 wage claims in situations where there was an appropriation
2 relevant to the wage claim, the fiscal year and lapse period
3 have expired, and sufficient funds were available to pay the
4 claim. The plan shall be funded through appropriations from the
5 General Revenue Fund specifically designated for that purpose.

6 Subject to sufficient appropriation, the Director is
7 authorized to pay any wage claim presented to the Director that
8 is supported by a final settlement or final judgment when the
9 chief officer of the State agency employing the claimant
10 certifies to the Director that the claim is a valid wage claim
11 and that the fiscal year and lapse period have expired. Payment
12 for claims that are properly submitted and certified as valid
13 by the Director shall include interest accrued at the rate of
14 7% per annum from the forty-fifth day after the claims are
15 received by the Department or 45 days from the date on which
16 the amount of payment is agreed upon, whichever is later, until
17 the date the claims are submitted to the Comptroller for
18 payment. When the Attorney General has filed an appearance in
19 any proceeding concerning a wage claim settlement or judgment,
20 the Attorney General shall certify to the Director that the
21 wage claim is valid before any payment is made. In no event
22 shall an amount in excess of \$150,000 be paid from this plan to
23 or for the benefit of any claimant.

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

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

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

6 (30 ILCS 608/Act rep.)

7 Section 90. The State Facilities Closure Act is repealed.

8 Section 97. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.