

HB0114



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0114

Introduced 1/10/2013, 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.

LRB098 02993 KMW 33008 b

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
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) Through December 31, 2012, establish rules,
5 procedures, and forms to be used by State agencies in the
6 administration and payment of workers' compensation
7 claims. Through December 31, 2012, the Department shall
8 initially evaluate and determine the compensability of any
9 injury that is the subject of a workers' compensation claim
10 and provide for the administration and payment of such a
11 claim for all State agencies. The appeal of a decision of
12 the Workers' Compensation Commission on compensability of
13 a State employee's claim for workers' compensation
14 benefits may be made to the circuit court. Through December
15 31, 2012, the Director may delegate to any agency with the
16 agreement of the agency head the responsibility for
17 evaluation, administration, and payment of that agency's
18 claims.

19 (10a) By April 1 of each year prior to calendar year
20 2013, the Director must report and provide information to
21 the State Workers' Compensation Program Advisory Board
22 concerning the status of the State workers' compensation
23 program for the next fiscal year. Information that the
24 Director must provide to the State Workers' Compensation
25 Program Advisory Board includes, but is not limited to,
26 documents, reports of negotiations, bid invitations,

1 requests for proposals, specifications, copies of proposed
2 and final contracts or agreements, and any other materials
3 concerning contracts or agreements for the program. By the
4 first of each month prior to calendar year 2013, the
5 Director must provide updated, and any new, information to
6 the State Workers' Compensation Program Advisory Board
7 until the State workers' compensation program for the next
8 fiscal year is determined.

9 (10b) No later than January 1, 2013, the chief
10 procurement officer appointed under paragraph (4) of
11 subsection (a) of Section 10-20 of the Illinois Procurement
12 Code (hereinafter "chief procurement officer"), in
13 consultation with the Department of Central Management
14 Services, shall procure one or more private vendors to
15 administer, beginning January 1, 2013, the program
16 providing payments for workers' compensation liability
17 with respect to the employees of all State agencies. The
18 chief procurement officer may procure a single contract
19 applicable to all State agencies or multiple contracts
20 applicable to one or more State agencies. If the chief
21 procurement officer procures a single contract applicable
22 to all State agencies, then the Department of Central
23 Management Services shall be designated as the agency that
24 enters into the contract and shall be responsible for the
25 contract. If the chief procurement officer procures
26 multiple contracts applicable to one or more State

1 agencies, each agency to which the contract applies shall
2 be designated as the agency that shall enter into the
3 contract and shall be responsible for the contract. If the
4 chief procurement officer procures contracts applicable to
5 an individual State agency, the agency subject to the
6 contract shall be designated as the agency responsible for
7 the contract.

8 (10c) The procurement of private vendors for the
9 administration of the workers' compensation program for
10 State employees is subject to the provisions of the
11 Illinois Procurement Code and administration by the chief
12 procurement officer.

13 (10d) Contracts for the procurement of private vendors
14 for the administration of the workers' compensation
15 program for State employees shall be based upon, but
16 limited to, the following criteria: (i) administrative
17 cost, (ii) service capabilities of the vendor, and (iii)
18 the compensation (including premiums, fees, or other
19 charges). A vendor for the administration of the workers'
20 compensation program for State employees shall provide
21 services, including, but not limited to:

22 (A) providing a web-based case management system
23 and provide access to the Office of the Attorney
24 General;

25 (B) ensuring claims adjusters are available to
26 provide testimony or information as requested by the

1 Office of the Attorney General;

2 (C) establishing a preferred provider program for
3 all State agencies and facilities; and

4 (D) authorizing the payment of medical bills at the
5 preferred provider discount rate.

6 (10e) By September 15, 2012, the Department of Central
7 Management Services shall prepare a plan to effectuate the
8 transfer of responsibility and administration of the
9 workers' compensation program for State employees to the
10 selected private vendors. The Department shall submit a
11 copy of the plan to the General Assembly.

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

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

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

1 release against any State employee involved in the
2 occurrence.

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

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

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

26 Nothing in Public Act 84-961 shall be construed to

1 affect in any manner the jurisdiction of the Court of
2 Claims concerning wage claims made against the State of
3 Illinois.

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

8 (Source: P.A. 96-928, eff. 6-15-10; 97-18, eff. 6-28-11;
9 97-895, eff. 8-3-12.)