

LEGISLATIVE BILL 1248

Approved by the Governor April 15, 1996

Introduced by Vrtiska, 1; Beutler, 28; Robinson, 16

AN ACT relating to state claims; to amend sections 81-8,239.01 and 81-8,239.02, Reissue Revised Statutes of Nebraska; to provide a claims process for catastrophic financial emergencies; to create a fund; to define terms; to state intent; to provide powers and duties; to provide a termination date; to repeal the original sections; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. (1) While appropriations are adequate to meet the normal needs, the Legislature recognizes the necessity to care for the unusual and extraordinary burdens imposed on the state and local government by catastrophic financial emergencies. It is the intent of the Legislature that the first recourse for responding to catastrophic financial emergencies shall be to funds regularly appropriated to the state or to local government by its governing body.

(2) For purposes of claims made pursuant to this section:

(a) Catastrophic financial emergency means a state of emergency within a local government caused by expenses of government which (i) are beyond the local government's ability to pay, (ii) create an undue burden on the local government due to a lack of unobligated fiscal resources, (iii) are incurred as a result of activities the cost of which are required by state statute to be paid by the local government combined with unreimbursed expenses incurred in relation to a disaster which has qualified for federal assistance, and (iv) are incurred within the five immediately preceding fiscal years but which may be related to acts or incidents that occurred not more than three years prior to that five-year period and may be ongoing;

(b) Disaster means the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural cause, including, but not limited to, fire, flood, earthquake, wind, storm, wave action, or oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, riot, or civil disturbance; and

(c) Local government means any county, city, or village in Nebraska.

(3) A local government may file a claim for reimbursement of indebtedness or for a grant or loan to provide financial relief from the state through the Local Government Catastrophic Financial Emergency Fund:

(a) To reimburse such local government for indebtedness incurred pursuant to sections 15-244, 16-213, 17-560, 18-1750, and 23-160.01 or a home rule charter as a result of a catastrophic financial emergency; and

(b) To provide financial relief to such local government in the form of a grant or loan to permit the local government to pay for expenses relating to or resulting from a catastrophic financial emergency.

(4) The claim shall be filed with the Risk Manager. The following information shall be filed with the claim in order to determine eligibility:

(a) A resolution approved by the governing body formally declaring a catastrophic financial emergency;

(b) Documentation of expenses incurred within the immediately preceding five fiscal years of any disaster that used the local government's financial resources;

(c) Documentation of expenses incurred within the immediately preceding five fiscal years as a result of activities the cost of which are required by state statute to be paid for by the local government;

(d) Documentation that the local government has exhausted other unobligated sources of revenue; and

(e) Additional information that may be required and shall be requested by the Risk Manager as part of the investigation.

(5) The Risk Manager shall immediately inform the State Claims Board as to the filing of the claim and the nature of the demand. The claim shall be investigated and the results of the investigation presented to the State Claims Board for review and decision.

(6) The State Claims Board shall have the discretion to approve or deny claims on the basis of both eligibility and merit. The claims the State Claims Board elects to approve shall be paid from the Local Government Catastrophic Financial Emergency Fund to the extent that there are funds available. The local government may appeal any claim denied by the State

Claims Board, or any claim approved but for which full payment has not been made, to the Legislature by filing a notice of appeal with the Risk Manager prior to December 31 of the year in which the State Claims Board decision was made. The appeal will be included in the claims bills annually considered by the Legislature. The Legislature may, at its discretion, elect to reverse the denial of claims under this section by the State Claims Board.

(7) If the State Claims Board elects to provide financial relief as a loan to a local government, the Risk Manager and the local government shall enter into an agreement, which shall include provisions for repayment to the fund of money loaned together with any interest. The rate of interest for the loan shall be three percent per annum, except that the board may elect to waive interest payments if the local government can demonstrate extreme financial hardship. The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after the local government is in receipt of the funds. The repayment period shall not exceed three years, except that the board may extend the time for making repayment in the event of extreme emergency or hardship.

(8) An annual report shall be made to the Legislature by the Risk Manager listing all claims against the Local Government Catastrophic Financial Emergency Fund.

(9) This section terminates on June 30, 1998.

Sec. 2. Section 81-8,239.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.01. (1) For purposes of sections 81-8,239.01 to 81-8,239.08, unless the context otherwise requires, the definition of state agencies found in section 81-8,210 shall apply, except that such term shall not include the Board of Regents of the University of Nebraska.

(2) There is hereby established a division within the Department of Administrative Services to be known as the risk management and state claims division. The division shall be headed by the Risk Manager who shall be appointed by the Director of Administrative Services. The division shall be responsible for the Risk Management Program, which program is hereby created. The program shall consist of the systematic identification of exposures to risk of loss as provided in sections 11-201 to 11-203, 13-911, 25-2165, 43-1320, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.08, and 81-8,300 and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to such sections. Such program shall be administered by the Risk Manager and shall include the operations of the State Claims Board and other operations provided in such sections.

(3) Under the Risk Management Program, the Risk Manager shall have the authority and responsibility to:

(a) Employ any personnel necessary to administer the Risk Management Program;

(b) Develop and maintain loss and exposure data on all state property and liability risks;

(c) Develop and recommend risk reduction or elimination programs for the state and its agencies and establish, implement, and monitor a statewide safety program;

(d) Determine which risk exposures shall be insured and which risk exposures shall be self-insured or assumed by the state;

(e) Establish standards for the purchase of necessary insurance coverage or risk management services at the lowest costs, consistent with good underwriting practices and sound risk management techniques;

(f) Be the exclusive negotiating and contracting agency to purchase insurance or risk management services and, after consultation with the state agency for which the insurance or services are purchased, enter into such contracts on behalf of the state and its agencies, officials, and employees to the extent deemed necessary and in the best interest of the state, and authorize payment for such purchase out of the appropriate funds created by section 81-8,239.02;

(g) Determine whether the state suffered a loss for which self-insured property loss funds have been created and authorize and administer payments for such loss from the State Self-Insured Property Fund for the purpose of replacing or rebuilding state property;

(h) Perform all duties assigned to the Risk Manager under the Nebraska Workers' Compensation Act and sections 11-201 to 11-203, 81-8,239.05, 81-8,239.07, and 84-1603 and section 1 of this act;

(i) Approve the use of risk management pools by any department, agency, board, bureau, commission, or council of the State of Nebraska; and

(j) Recommend to the Legislature such legislation as may be

necessary to carry out the purposes of the Risk Management Program and make appropriation requests for the administration of the program and the funding of the separate funds administered by the Risk Manager.

(4) No official or employee of any entity created by local public agencies pursuant to the Interlocal Cooperation Act shall be considered a state official or employee for purposes of sections 81-8,239.01 to 81-8,239.06.

Sec. 3. Section 81-8,239.02, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.02. The following separate permanent revolving funds are established in the state treasury for use under the Risk Management Program according to the purposes for which each fund is established:

(1) The State Insurance Fund is hereby created for the purpose of purchasing insurance to cover property, fidelity, and liability risks of the state and workers' compensation claims against the state and other risks to which the state or its agencies, officials, or employees are exposed and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide insurance coverage as directed by the Risk Manager. The Risk Manager may retain in the fund sufficient money to pay for any deductibles or copayments as may be required by such insurance policies;

(2) The State Self-Insured Property Fund is hereby created for the purpose of replacing, repairing, or rebuilding state property which has incurred damage or is suffering other loss not fully covered by insurance and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide property coverage as directed by the Risk Manager. The Risk Manager may assess state agencies to provide self-insured property coverage; and

(3) The State Self-Insured Indemnification and Liability Fund is hereby created for the purpose of paying compensable liability and fidelity claims against the state or its agencies, officials, or employees which are not fully covered by insurance and for paying indemnification claims under section 81-8,239.05. Indemnification claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The fund may receive deposits from assessments against state agencies to pay for the costs associated with providing and supporting indemnification claims. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees; and

(4) The Local Government Catastrophic Financial Emergency Fund is hereby created for the purpose of paying compensable claims under section 1 of this act and for providing financial relief to local governments under such section in the form of grants or loans. All obligations and expenses incurred by the Risk Management Program as a result of claims filed against the fund shall be paid from the fund. The creation of the fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees or any political subdivision or its officials or employees. Voluntary payments from any source to aid in carrying out the purpose of the fund and payments on loans if so designated may be accepted and deposited to the credit of the fund. This subdivision terminates on June 30, 1998.

Sec. 4. Original sections 81-8,239.01 and 81-8,239.02, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.