

FIRST REGULAR SESSION

HOUSE BILL NO. 693

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE YATES.

Read 1st time March 2, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1981L.011

AN ACT

To repeal sections 537.705, 537.720, and 537.730, RSMo, and to enact in lieu thereof three new sections relating to risk management for public entities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 537.705, 537.720, and 537.730, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 537.705, 537.720, and 537.730, to read
3 as follows:

537.705. 1. All public entities in Missouri shall have the option of participating in the
2 fund **after competitive bidding** and making annual contributions to the fund in the amount
3 determined by the board in accordance with the provisions of section 379.470, RSMo, relating
4 to rates established by insurers. Participation in the fund has the same effect as purchase of
5 insurance by the public entity, as otherwise provided by law, and shall have the same effect as
6 a self-insurance plan adopted by the governing body of any political subdivision of the state.
7 Moneys in the fund shall be available for:

8 (1) The payment and settlement of all claims for which coverage has been obtained by
9 any public entity in accordance with coverages offered by the board;

10 (2) The payment and settlement of tort claims against any officer or employee of a
11 participating public entity for which coverage has been obtained by any public entity in
12 accordance with coverages offered by the board when the claim is upon conduct of such officer
13 or employee arising out of and performed in connection with his or her official duties on behalf
14 of the participating public entity;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (3) Attorney's fees and expenses incurred in the settlement and defense of such entities
16 and persons for claims specified in this subsection.

17 2. No amount in excess of the amount specified by section 537.756 shall be paid from
18 the fund for the payment and settlement of claims arising out of any single occurrence.

19 3. The board of trustees of the fund will negotiate the settlement of and provide the
20 defense of any claim for which coverage has been obtained by any public entity in accordance
21 with coverages offered by the board. The board of trustees of the fund shall make the final
22 determination on the settlement of any claim, or any portion of any claim, which requires
23 payment from the fund. For any year in which any public entity does not make a yearly
24 contribution to the fund, the board of trustees of the fund shall not be responsible, in any way,
25 for negotiating the settlement of any claim arising from an occurrence in that year, providing any
26 defense of any claim arising from an occurrence in that year, making any payment on any claim
27 arising from an occurrence in that year, or making any payment on any judgment on any claim
28 arising from an occurrence in that year. Any public entity which discontinues its participation
29 in the fund may not resume participation for a period of three years from the date it discontinues
30 participation.

31 4. All staff for the Missouri public entity risk management fund shall be provided by the
32 office of administration except as otherwise specifically determined by the board. The fund shall
33 reimburse the office of administration for all costs of providing staff required by this subsection.
34 Such reimbursement shall be made on an annual basis, pursuant to contract negotiated between
35 the fund and the office of administration. As established in section 537.700, the Missouri public
36 entity risk management fund is a body corporate and politic, and the state of Missouri shall not
37 be liable in any way with respect to claims made against the fund or against entities or
38 individuals covered by the fund, nor with respect to any expense of operation of the fund.
39 Money in the fund is not state money nor is it money collected or received by the state.

40 5. Each participating public entity shall notify the board of trustees of the fund within
41 seven working days of the time notice is received that a claim from an occurrence has been made
42 against the entity, or one of its officers or employees. The public entity shall supply information
43 to the board of trustees of the fund concerning any claim upon request. It shall also notify the
44 board of trustees of the fund upon the closing of any claim.

45 6. The board may contract with independent insurance agents, authorizing such agents
46 to accept contributions to the fund from public entities on behalf of the board upon such terms
47 and conditions as the board deems necessary, and may provide a reasonable method of
48 compensating such agents. Such compensation shall not be additional to the contribution to the
49 fund.

537.720. 1. The board shall meet in Jefferson City, Missouri, upon the written call of the chairman or by the agreement of any three members of the board. Notice of the meeting shall be delivered to all other trustees in person or by depositing notice in a United States post office in a properly stamped and addressed envelope not less than six days prior to the date fixed for the meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one meeting in each quarter.

2. Four trustees shall constitute a quorum for the transaction of business, and any official action of the board shall be based on a majority vote of the trustees present.

3. The trustees shall serve without compensation but shall receive from the fund their actual and necessary expenses incurred in the performance of their duties for the board.

4. Duties performed for the fund by any member of the board who is an employee of a public entity shall be considered duties in connection with the regular employment of such individual, and he shall suffer no loss in regular compensation by reason of the performance of such duties.

5. The board shall be considered a public governmental body as defined in section 610.010, RSMo.

537.730. 1. The general administration of, and responsibility for, the proper operation of the fund, including all decisions relating to payments from the fund, are hereby vested in the board of trustees.

2. The board shall determine and prescribe all rules, regulations, coverages to be offered, forms and rates to carry out the purposes of sections 537.700 to 537.755. **All rates established by the board shall be based on actuarial standards and subject to the provisions of sections 379.470 and 379.475, RSMo. Any offer of earthquake coverage to a public entity shall have separately stated:**

(1) **The maximum and minimum coverage limits for each public entity; and**

(2) **The premium, rate, or assessment for such coverage for the public entity.**

Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

20 3. The board shall have the power to subpoena witnesses or obtain the production of
21 records when necessary for the performance of its duties.

22 4. Subject to the provisions of the constitution and sections 537.700 to 537.755, the
23 board shall have exclusive jurisdiction and control over the funds and property of the fund.

24 5. No trustee or staff member of the fund shall receive any gain or profit from any
25 moneys or transactions of the fund.

26 6. Any trustee or staff member accepting any gratuity or compensation for the purpose
27 of influencing his action with respect to the investment of the funds of the system or in the
28 operations of the fund shall forfeit his office and in addition shall be subject to the penalties
29 prescribed in section 576.020, RSMo.

30 7. The board shall have the authority to use moneys from the fund to purchase one or
31 more policies of insurance or reinsurance to cover the liabilities of participating public entities
32 which are covered by the fund.

33 8. If such insurance can be procured, the board shall have the authority to procure
34 insurance covering participating public entities and their officers and employees for amounts in
35 excess of the amount specified by section 537.756 per occurrence for liabilities covered by the
36 fund. The costs of such insurance shall be considered in determining the contribution of each
37 public entity. **Notwithstanding the provisions of this section, the board shall acquire**
38 **reinsurance for and provide adequate catastrophic protection on covered property and**
39 **equipment, and shall not maintain retention of more than one million dollars.**

40 9. The board shall have the authority to use moneys from the fund to assist participating
41 entities in assessing and reducing the risk of liabilities which may be covered by the fund.

42 **10. The board shall file an annual report as provided in and consistent with section**
43 **379.105, RSMo.**