

ACT 266

S.B. NO. 1170

A Bill for an Act Relating to Risk Management and Insurance Administration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
STATE RISK MANAGEMENT AND INSURANCE
ADMINISTRATION**

§ -1 **Definitions.** As used in this chapter:

26-6. "Comptroller" means the comptroller of the State as designated in section

"Department" means the department of accounting and general services.

"Attorney general" means the attorney general of the State.

"Informal resolution" means the process of investigating a claim and negotiating the resolution of the claim.

"Insurance" shall have the same meaning in this chapter as it has in section 431:1-201.

"Property insurance" shall have the same meaning in this chapter as it has in section 431:1-206.

"Casualty insurance" shall have the same meaning as general casualty insurance has in section 431:1-209, provided that in this chapter "casualty insurance" shall exclude disability insurance as defined in section 431:1-205, and includes marine and transportation insurance as defined in section 431:1-207, vehicle insurance as defined in section 431:1-208 surety insurance as defined in section 431:1-210 and ocean marine insurance as defined in section 431:1-211.

"State agency" means all executive departments, boards, and commissions of the State and all public corporations created by the legislature, but excludes any contractor with the State.

"Risk manager" means the risk manager described in section -7.

"Tort claim" means any written request or demand for damages against the State within the meaning of chapter 662, and includes a "complaint" within the meaning of Rule 7(a) of the Hawaii Rules of Civil Procedure, of the District Court Rules of Civil Procedure and of the Federal Rules of Civil Procedure, if the complaint is for damages against the State within the meaning of chapter 662.

"Property of the State" includes real and personal property rented or used by the State and for which the State is responsible to the owner, as well as property owned by the State.

§ -2 Responsibilities of the comptroller. (a) The comptroller, through the risk manager, shall:

- (1) Have discretion to purchase casualty insurance for the State or state agencies, including those employees of the State who, in the comptroller's discretion, may be at risk and shall be responsible for the acquisition of all casualty insurance;
- (2) Have discretion to purchase property insurance for the State or state agencies and shall acquire all property insurance;
- (3) Direct and manage all risk management and insurance programs of the State, except for employee benefits insurance and workers' compensation insurance programs or as otherwise provided in chapters 87, 88, 383 to 386A, 392, and 393;
- (4) Consult with state agencies to determine what property, casualty, and other insurance policies are presently in force or are sought by the state agencies and to make determinations about whether to continue subscribing to insurance policies. In the event that the risk manager's determination is not satisfactory to the state agency, the state agency may have the risk manager's decision reviewed by the comptroller. In this case, the comptroller's decision shall be final;

- (5) Consolidate and combine state insurance coverages, and purchase excess insurance when, in the comptroller's discretion, it is appropriate to do so;
- (6) Acquire risk management, investigative, claims adjustment, actuarial, and other services, except attorney's services, as may be required for the sound administration of this chapter;
- (7) Gather from all state agencies and maintain data regarding the State's risks and casualty, property, and fidelity losses;
- (8) In conjunction with the attorney general and as otherwise provided by this chapter, compromise or settle claims cognizable under chapter 662;
- (9) Provide technical services in risk management and insurance to state agencies; and
- (10) Do all other things appropriate to the development of sound risk management practices and policies for the State.

(b) The requirements of chapter 103 shall not apply to the acquisition of insurance by or for state agencies.

(c) Any provision in this section to the contrary notwithstanding, the University of Hawaii (as to casualty insurance risks only), the Research Corporation of the University of Hawaii (as to casualty insurance risks only), and the county/state hospitals of the department of health (with respect to medical malpractice risks only) shall be exempt from the requirements of this chapter.

§ -3 Adjustment of claims against the State. (a) All tort claims against the State or its agencies or employees arising under chapter 662, except those within the purview of section -8, shall be reviewed by the attorney general to determine:

- (1) Whether the tort claim is one for which the State is or may be liable under chapter 662; and
- (2) Whether the attorney general should defend employees of the State against whom a claim has been made, consistent with section 662-16.

(b) Upon the attorney general's affirmative determination under subsection (a), the attorney general may refer the claim to the comptroller for informal resolution.

(c) All claims against the State that are within the purview of section -8 shall be reviewed in the first instance by the comptroller for informal resolution as provided in this section.

(d) If the comptroller succeeds in negotiating the settlement of a claim that is within the purview of section -8 for an amount not exceeding the medical-rehabilitative limit established in section 431:10C-308 that applies to the claim, the comptroller may pay the claim without further review by the attorney general.

(e) If the comptroller, through the comptroller's claims adjusting staff, succeeds in negotiating the settlement of a tort claim that is not within the purview of section -8, the comptroller may pay the claim pursuant to chapter 662.

(f) Upon referral by the comptroller, the attorney general, in the attorney general's discretion, shall make determinations of whether a claim would or would not be within the purview of section -8 for purposes of subsections (d) and (e).

(g) If the tort claim cannot be resolved informally as set forth in subsections (d) or (e), the comptroller promptly shall refer the claim back to the attorney general for resolution in the manner described in chapter 662.

(h) All of the efforts of the comptroller or the comptroller's delegate under this section shall be "compromise negotiations" within the meaning of the rule 408, section 626-1.

(i) Claims settled and approved under subsections (d) and (e) shall be paid from the state risk management revolving fund described in section -4.

§ -4 State risk management revolving fund. (a) The State risk management revolving fund is created and shall be funded in amounts reasonably necessary to:

- (1) Carry out the responsibilities of the comptroller established in section -2;
- (2) Pay claims to state agencies for losses to property of the State caused by fire or other casualty, including the cost to repair or replace buildings and other structures, replace damaged contents, and to provide alternate structures while damaged structures are being repaired or replaced;
- (3) Pay claims against the State under sections -3 and -8; and
- (4) Pay for losses to the State incurred by the dishonesty, nonfeasance, or misfeasance of any officer or employee of the State or for any losses to the State through larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, or any other fraudulent or dishonest act committed by one or more of the employees of the State acting directly or in collusion with others.

(b) In addition to any appropriation the legislature shall make to the state risk management revolving fund, the comptroller may apportion to, and collect from, state agencies those amounts of money that, in the discretion of the comptroller, reflect benefits received by the agencies under this chapter. The comptroller may consider the relevant risk and loss experience of the agencies in making apportionments and assessments. Funds so collected shall be deposited to the state risk management revolving fund.

(c) The comptroller may establish deductibles for the state agencies for certain perils or classes of property losses and may:

- (1) Assess the agencies for losses incurred in the amount of the deductible, or
- (2) Reduce the payment from the state risk management revolving fund to cover the casualty loss by the amount of the deductible.

(d) The comptroller may establish a formula for refunds to the state agencies based upon the agencies' risk and loss experience.

(e) The comptroller shall draw warrants on the state risk management revolving fund for the payment of losses approved by the comptroller.

(f) Money in the state risk management revolving fund not expended within the fiscal year or years shall not lapse, but money shall be retained in the fund for use in subsequent years.

(g) Money in the state risk management revolving fund shall be expended only for the purposes delineated in subsection (a) and only upon the authority of the comptroller, who is given discretion when to permit expenditures from the fund. In no event shall funds be expended for the use or benefit of any private person on account of the person's claim against the State.

§ -5 Investment of fund. The director of finance shall invest all moneys appropriated or assessed to the state risk management revolving fund. Interest upon the investments shall be credited to the state risk management revolving fund.

§ -6 Fund advancement; dissolution. If the state risk management revolving fund should become financially incapable of meeting its obligations under this chapter, the comptroller, in the comptroller's discretion, may:

- (1) Request that the governor authorize the transfer of sufficient sums to meet the fund's obligations from whatever such savings as may be available from other current appropriation for any other state program. Money so advanced shall be repaid from the state risk management revolving fund in annual installments, without interest. The amount

of installments shall be fixed by the director of finance at whatever amount as can reasonably be expected to liquidate indebtedness of the fund in not more than ten years; or

- (2) Dissolve the fund, prorating remaining assets of the fund among the claimants, giving priority to those claims as, in the comptroller's discretion, is appropriate.

§ -7 **Risk management.** The comptroller shall appoint a risk manager to supervise and direct the determination and treatment for the best interests of the State of all risks appertaining to the property of the State and its personnel and operations. The risk manager shall be responsible for the administration of the comptroller's responsibilities with respect to this chapter.

§ -8 **Insurance on public vehicles.** Vehicles owned by the State or in the custody and use of any department may be self-insured or insured by purchased insurance against public liability in compliance with article 10C of chapter 431. Determinations of whether to insure or self-insure shall be made by the comptroller in conjunction with the state agency having custody or control of the vehicle, or the vehicle may be insured on a complete or excess coverage basis under a comprehensive automobile liability insurance policy entered into by the comptroller. If the vehicles are self-insured, claims for which the State is liable under article 10C of chapter 431 may be settled and paid by the comptroller from the state risk management revolving fund, notwithstanding the provisions of chapter 662. Any purchased state comprehensive automobile liability insurance policy shall be administered by and be subject to the control of the comptroller.

§ -9 **Construction.** Nothing in this chapter shall be deemed to expand the scope of liability of the State beyond that set forth in chapter 662. Nothing in this chapter shall be construed to waive the immunity of the State from suit in federal courts guaranteed by the eleventh amendment to the Constitution of the United States."

SECTION 2. Section 661-11, Hawaii Revised Statutes, is amended to read as follows:

"§661-11 **Tort claims against State where covered by insurance.** This section applies to an action where (1) the State is a party defendant; (2) the subject matter of the claim is covered by [an] a primary insurance policy entered into by the State or any of its agencies; and (3) chapter 662 does not apply. No defense of sovereign immunity shall be raised in an action under this section. However, the State's liability under this section shall not exceed the amount of, and shall be defrayed exclusively by, [such] the primary insurance policy.

An action under this section [is] shall not be subject to [the provisions of] sections 661-1 to 661-10."

SECTION 3. Chapter 41, Hawaii Revised Statutes, is repealed.

SECTION 4. Funds appropriated or authorized as the case may be, in other acts for state departments and agencies in fiscal biennium 1987-1989 of \$11 million for the purposes of the state risk management revolving fund proposed in this Act, or so much thereof as may be sufficient for the purposes of this Act shall be transferred by expenditure and deposited in the state risk management revolving fund. That sums transferred may include sums appropriated or authorized for the risk management program (AGS-203) and sums appropriated for settlement of tort claims against the State to be expended by the attorney general.

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SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1988.

(Approved June 13, 1988.)