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***Department of Administrative
Services***

Risk Management Services

ENABLING LEGISLATION

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FIDELITY BOND

§ 50-5-51. Power, authority, and duty of department

The Department of Administrative Services shall have the power and authority and it shall be the department's duty, subject to this part:

(6) To procure all fidelity bonds covering state officials and employees required by law or administrative directive to give such bonds; and, in order to provide the bonds at a minimum expense to the state, the bonds may be procured under a master policy or policies providing insurance agreements on a group or blanket coverage basis with or without deductibles or excess coverage over the state's retention as determined by **the commissioner**. Fidelity bonds covering state officials and employees which are procured pursuant to this paragraph shall expressly provide that all state officials and employees who are required by law to be bonded be named in the fidelity bond as insureds or beneficiaries under the terms of the fidelity bond. Inclusion of any state official, officer, or employee required by law or administrative directive to be specifically bonded in a master fidelity bond under the terms of this part shall satisfy any statutory requirement that the official, officer, or employee be bonded. Fidelity bonds procured pursuant to this paragraph shall also expressly provide for indemnification, out of the proceeds of the fidelity bonds, of all state officials and employees for any liability or expense of any nature resulting from a claim on the state official's or employee's bonds which is due to or as a result of an act of a subordinate of the state official or employee. In order to finance the continuing liability established with other agencies of state government, **the commissioner** is authorized to retain all moneys paid to **the department** as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve for the payment of such liability and the expenses necessary to administer properly the insurance program. **The commissioner** is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by **the department**, increased or decreased deductibles based on participation in loss control programs established by **the department**, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, **the department** is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. **The commissioner** shall invest the moneys in the same manner as other such moneys in his or her possession.

§ 50-5-51.1. Purchase of commercial fidelity bonds for officials, officers, and employees of certain county boards and departments

The commissioner of administrative services may, upon request, assist and coordinate with county departments of health, county departments of family and children services, and community service boards the purchase of commercial fidelity bonds for officials, officers, and employees of such boards and departments. The payment of the premium to the commercial fidelity carrier will be the responsibility of such county departments of health, county departments of family and children services, and community service boards.

GEORGIA PUBLIC SCHOOL PERSONNEL INDEMNIFICATION FUND

§ 45-9-70. Purpose of article

The purpose of this article is to provide by law for the indemnification with respect to the death or permanent disability of public school teachers and public school employees who are killed or permanently disabled by an act of violence in the line of duty on or after July 1, 2001.

§ 45-9-71. Definitions

As used in this article, the term:

(1) "Act of violence" means a willful act of violence committed by a person other than a fellow public school teacher or public school employee.

(2) "Commission" means the Georgia Public School Personnel Indemnification Commission.

(3) "In the line of duty" means while on duty and performing services for and receiving compensation from the public school district which employs such public school teacher or public school employee.

(4) "Permanent disability" means disability due to:

(A) Loss of both eyes or blindness in both eyes with only light perception;

(B) Loss or loss of use of both hands;

(C) Loss or loss of use of both legs;

(D) Loss of a lower extremity or residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair; or

(E) Organic brain damage resulting from direct physical trauma incurred after July 1, 2001, which so affects the mental capacity as to preclude ability to function productively in any employment.

(5) "Public school employee" has the meaning provided by Code Section 20-2-910.

(6) "Public school teacher" has the meaning provided by Code Section 20-2-880.

§ 45-9-72. Establishment of indemnification program

(a) There is established a program to provide for indemnification with respect to the death or permanent disability of any public school teacher or public school employee who is killed or permanently disabled by an act of violence in the line of duty on or after July 1, 2001.

(b) Such program shall be administered by the Georgia Public School Personnel Indemnification Commission.

§ 45-9-73. Indemnification commission created; composition; assignment to **Department of Administrative Services** for administrative purposes

There is created the Georgia Public School Personnel Indemnification Commission which shall be composed of the Governor, the State School Superintendent, the Secretary of State, the Commissioner of Insurance, the chairperson of the State Board of Education, the commissioner of community health, and one public school teacher and one public school employee to be appointed by the Governor and serve at the pleasure thereof. The Governor shall be the chairperson of the commission and the commission shall be assigned to **the Department of Administrative Services** for administrative purposes.

§ 45-9-74. Commission to promulgate rules and regulations; use of personnel and resources of other agencies

The commission is authorized to promulgate rules and regulations relative to the program of indemnification. Such rules and regulations may provide for initial investigation of claims and the issuance of subpoenas to facilitate such investigation, special masters, hearings, procedures for applications for indemnification, and all other matters so as to enable the commission to carry out its duties fairly, properly, and equitably. The chairperson of the commission shall be authorized to contact other state agencies for the purpose of using the personnel and resources of such agencies to assist the commission in carrying out its duties.

§ 45-9-75. Georgia Public School Personnel Indemnification Fund -- Creation; general provisions

There is created a fund to be known as the Georgia Public School Personnel Indemnification Fund. The custodian of the Georgia Public School Personnel Indemnification Fund shall be **the Department of Administrative Services**. **The Department of Administrative Services** shall administer the Georgia Public School Personnel Indemnification Fund and may invest the resources of the fund in the same manner and fashion that an insurer authorized to issue contracts of life insurance is authorized to invest its resources. **The Department of Administrative Services** shall be further authorized to intermingle the resources of the Georgia Public School Personnel Indemnification Fund with the resources of any other funds or accounts which have similar restrictions on the investments which may be made with such funds; provided, however, that separate bookkeeping accounts on each such fund shall be maintained.

§ 45-9-76. Georgia Public School Personnel Indemnification Fund -- Revenues from sale of license plates; authorization to accept funds from other sources

The Georgia Public School Personnel Indemnification Fund shall consist of revenues derived from the sale of special and distinctive motor vehicle license plates honoring Georgia educators as provided by Code Section 40-2-86.5. In addition, **the Department of Administrative Services** is authorized to accept for deposit in the Georgia Public School Personnel Indemnification Fund any other funds from any

other source. All revenue or other funds received by the Georgia Public School Personnel Indemnification Fund shall not lapse.

§ 45-9-77. Georgia Public School Personnel Indemnification Fund -- Authority of Department of Administrative Services

The Department of Administrative Services is authorized, subject to the limitations contained in this article:

(1) To pay the appropriate indemnification to the persons eligible for indemnification under this article or to the estate of such persons as provided in this article from the proceeds of the Georgia Public School Personnel Indemnification Fund;

(2) To make such payments as may be necessary to defray the expenses and costs incurred by the commission in administering this article; and

(3) With the approval of the commission, to utilize the resources of the Georgia Public School Personnel Indemnification Fund to purchase insurance to provide for such indemnification.

§ 45-9-78. Payment of indemnification for death or disability generally; designation of method of payment; procedure for making of payments

(a) The indemnification shall be paid by the commission when a public school teacher or public school employee who in the line of duty:

(1) Is killed or receives bodily injury which results in death within 12 months thereafter, if such death occurs from an act of violence and if such death is not the result of suicide and if such bodily injury is not intentionally self-inflicted; or

(2) Is permanently disabled, if the permanent disability occurs from an act of violence and if the permanent disability is not intentionally self-inflicted.

(b) For any compensable claim filed under this article, payment shall be made as follows:

(1) In the case of permanent disability, the eligible disabled person pursuant to this article may elect payment of \$75,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$75,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; and

(2) In the case of death, payment shall be made to the estate of a person who is eligible for indemnification under this article as follows: the executor or administrator may elect payment of \$75,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$75,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum.

(c) After determining that a public school teacher or public school employee has been killed or permanently disabled by an act of violence in the line of duty and that he or she or his or her estate beneficiary is entitled to indemnification under this

article, the commission, within ten days after the end of the fiscal year in which such claim was filed and subject to the provisions of Code Section 45-9-79, shall forward a certified copy of the order granting such payment, which order shall include the person to whom such payment shall be made and the method of payment, to **the commissioner of administrative services** who is authorized to make the appropriate payments from funds made available for the purpose of carrying out this article.

§ 45-9-79. Insufficient funds; procedure for making payments

If the moneys provided by this article are not sufficient at any time to enable the commission to pay each person his or her benefits in full under this article, then those persons entitled to benefits whose claims were filed in the same fiscal year shall be paid an equal amount, if any, which, in the opinion of the commission, the fund may provide. In no such event shall the state or commission or any member of the commission be liable to any person for any deficiencies in payments under this article.

§ 45-9-79.1. Application for indemnification

(a) An application for indemnification with respect to a claim filed under this article for permanent disability of a public school teacher or public school employee shall be submitted by that person unless the person is mentally incompetent, in which case the application may be made on such person's behalf by the parent, spouse, guardian, or other authorized individual. An application for indemnification with respect to a claim filed under this article for the death of a public school teacher or public school employee shall be submitted by the individual authorized to administer the estate.

(b) An application for indemnification with respect to the death or permanent disability of a public school teacher or public school employee who is killed or permanently disabled by an act of violence in the line of duty on or after July 1, 2001, must be made within 24 months after the date of the death or disability.

§ 45-9-79.2. Indemnification not taxable

It is the intent of the General Assembly that indemnification paid pursuant to this article shall not be taxable within this state for any purpose.

§ 45-9-79.3. Indemnification not to be awarded where penal violation caused or contributed to death or disability

No indemnification shall be awarded to any person otherwise entitled thereto who violates a penal law of this state if such violation caused or contributed to the death or disability of the person.

§ 45-9-79.4. Annual report to General Assembly

The commission shall annually file a report of its activities with the General Assembly, which report shall include the amount of funds paid under the program of

indemnification. It shall also include a copy of each order providing for payment or a summary of each such order giving all pertinent details.

§ 45-9-79.5. Giving of false information or testimony; liability to state

(a) Any person who shall knowingly give false information or false testimony causing or intended to cause the payment of indemnification which would not otherwise be justified under this article shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony.

**GEORGIA STATE INDEMNIFICATION FUND
(LAW ENFORCEMENT OFFICERS, FIREMEN, PRISON GUARDS,
AND PUBLICLY EMPLOYED EMERGENCY MEDICAL TECHNICIANS)**

§ 45-9-80. Purpose of part

§ 45-9-81. Definitions

As used in this part, the term:

(1) "Commission" means the Georgia State Indemnification Commission.

(2) **"Department" means the Department of Administrative Services.**

(3) "Emergency management rescue specialist" means any person licensed as an emergency management rescue specialist pursuant to Code Section 38-3-36.

(4) "Emergency medical technician" includes only persons who:

(A) Are certified as emergency medical technicians, paramedics, or cardiac technicians under Chapter 11 of Title 31; and

(B) Are employed in the capacity for which they are so certified by a department, agency, authority, or other instrumentality of state or local government.

(5) (A) "Firefighter" means any person who is employed as a professional firefighter on a full-time or part-time basis by any municipal, county, or state government fire department employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal, county, and state fire prevention codes, enforcing any law pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(B) "Firefighter" shall also mean any individual serving as an officially recognized or designated member of a legally organized volunteer fire department, or any

employee of the Georgia Forestry Commission whose job duties include fire mitigation, who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(C) "Firefighter" shall also mean any individual employed by a person or corporation which has a contract with a municipal corporation or county to provide fire prevention and fire-fighting services to such municipal corporation or county and any such individual is employed on a full-time basis of at least 40 hours per week and has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal or county fire prevention codes, enforcing any municipal or county ordinances pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(6) "In the line of duty" means:

(A) With respect to an emergency medical technician or an emergency management rescue specialist, while on duty and when responding to or returning from an emergency or performing duties at the scene of an emergency or transporting a person to a medical facility for emergency treatment or returning therefrom;

(B) With respect to a volunteer firefighter, while on duty and when responding to or returning from a fire or other emergency or performing duties during any fire or other emergency or performing duties intended to protect life and property including, without limitation, actual participation in a training exercise;

(C) With respect to a law enforcement officer or firefighter, while on duty and performing services for and receiving compensation from the law enforcement and fire service agency which employs such officer or firefighter, while off duty when responding to any situation which would save a life or preserve the peace, or while preventing or attempting to prevent the commission of a crime or fire. A law enforcement officer or firefighter who is performing duties for and receiving compensation from a private employer at the time of such officer's or firefighter's death or bodily injury causing total permanent disability or partial permanent disability shall not be considered in the line of duty if the officer or firefighter is entitled to workers' compensation benefits from the private employer or the private employer's insurer;

(D) With respect to a prison guard, while on duty and performing services for and receiving compensation from the public agency which employs such prison guard; or

(E) With respect to a state highway employee, while on duty and performing any work necessary for the construction, maintenance, or operation of a roadway on or within the public roads of the state as defined in paragraph (24) of Code Section 32-1-3 when such employee is killed or permanently disabled as the result of working under hazardous conditions in close proximity to moving traffic or equipment. Such term shall not mean commuting to or from work or commuting to or from training.

(7) "Law enforcement officer" means any agent or officer of this state, a political

subdivision or municipality of this state, or an authority of this state or a political subdivision of this state who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws with the power of arrest and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the employees designated by the commissioner of juvenile justice of the Department of Juvenile Justice pursuant to paragraph (2) of subsection (i) of Code Section 49-4A-8, which employees have the duty to investigate and apprehend delinquent and unruly children who have escaped from a facility under the jurisdiction of the Department of Juvenile Justice or who have broken the conditions of supervision. Such term also includes members of the Georgia National Guard, the composition of which is set forth in Code Section 38-2-3, who have been called into active state service by the Governor.

(8) "Organic brain damage" means direct physical trauma to the brain which so affects the mental capacity as to preclude function productively in any employment.

(9) "Partial permanent disability" means disability due to:

(A) Loss of the use of one eye or blindness in one eye with only light perception;

(B) Loss of one hand;

(C) Loss of one leg; or

(D) Loss of a lower extremity or the residual effect of an organic disease or injury which so affects the functions of balance or propulsion as to preclude locomotion without the use of a wheelchair for all but very short distances.

(10) "Prison guard" means any person employed by the state or any political subdivision thereof whose principal duties relate to the supervision and incarceration of persons accused or convicted of the violation of the criminal laws of this state or any political subdivision thereof. Such term shall also mean any probation supervisor or parole officer who is required to be certified under Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," and whose principal duties directly relate to the supervision of adult probationers or adult parolees. Such term also means any person employed by the state or any political subdivision thereof whose principal duties include the supervision of youth who are charged with or adjudicated for an act which if committed by adults would be considered a crime.

(11) "State highway employee" means an employee of the Georgia Department of Transportation who receives compensation directly therefrom and regularly engages in duties necessary for the construction, maintenance, or operation of roadways on or within the public roads of this state as defined in paragraph (24) of Code Section 32-1-3.

(12) "Total permanent disability" means disability due to:

(A) Loss of both eyes or blindness in both eyes with only light perception;

(B) Loss or loss of use of both hands;

(C) Loss or loss of use of both legs;

(D) Loss of a lower extremity or the residual effect of an organic disease or injury which so affects the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair at all times; or

(E) Organic brain damage.

§ 45-9-82. Establishment of indemnification program

(a) There is established a program to provide for indemnification with respect to the:

(1) Death of any law enforcement officer, firefighter, or prison guard who is or has been killed in the line of duty subsequent to January 1, 1973;

(2) Permanent disability of any law enforcement officer, firefighter, or prison guard who is or has been permanently disabled in the line of duty subsequent to January 1, 1973;

(3) Death or permanent disability of any emergency medical technician who is killed or permanently disabled or who has been killed or permanently disabled in the line of duty subsequent to January 1, 1977;

(4) Death or permanent disability of any emergency management rescue specialist who is killed or permanently disabled on or after January 1, 1991; and

(5) Death or permanent disability of any state highway employee who is killed or permanently disabled in the line of duty on or after January 1, 1990.

(b) Such program shall be administered by **the department**, subject to review by the commission.

§ 45-9-83. Indemnification commission created; composition; assignment to **Department of Administrative Services** for administrative purposes; meetings

There is created the Georgia State Indemnification Commission which shall be composed of the Governor, the executive director of the Peace Officer Standards and Training Council, the executive director of the Georgia Firefighter Standards and Training Council, the commissioner of public safety, the commissioner of transportation, the commissioner of corrections, the commissioner of community health, one law enforcement officer who shall be a member of the Peace Officers' Association of Georgia appointed by the Governor from a list of five candidates provided by such organization, and one firefighter who shall be a member of the Georgia State Firemen's Association appointed by the Governor from a list of five candidates provided by such organization. The Governor shall be the chairperson of the commission and the commission shall be assigned to **the department** for administrative purposes. The commission shall meet at least semiannually upon the call of the Governor.

§ 45-9-84. Commission to consider appeals of department decisions; correction of errors of material fact or abuse of discretion; use of personnel and resources of other agencies

The commission is authorized to consider appeals of decisions of **the department** to correct errors made by the department in approving or denying any claim filed pursuant to this article. The commission may modify or override the decision of **the department** upon a showing of an error of material fact or an abuse of discretion. **The department** and the commission shall be authorized to contact other state agencies for the purpose of using the personnel and resources of such agencies to assist the commission in carrying out its duties.

§ 45-9-84.1. Georgia State Indemnification Fund -- Creation; administration; investment fund paid over to Office of Treasury and Fiscal Services

There is created a fund to be known as the Georgia State Indemnification Fund. The custodian of the Georgia State Indemnification Fund shall be **the department**. **The department** shall administer the Georgia State Indemnification Fund and shall approve or deny claims for compensation filed pursuant to this article; provided, however, that any decision of **the department** shall be subject to review by the commission as provided in Code Section 45-9-84. Any amounts held by the Georgia State Indemnification Fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the Georgia State Indemnification Fund. The director of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the Georgia State Indemnification Fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, **the commissioner** shall submit an estimate of the date such funds shall no longer be available for investment. When **the commissioner** wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services.

§ 45-9-84.2. Georgia State Indemnification Fund -- Authorization for appropriation of moneys to the fund; moneys from other sources

The General Assembly is authorized to appropriate funds to be placed in the Georgia State Indemnification Fund for the purpose of providing for indemnification with respect to the death or disability of any law enforcement officer, firefighter, or prison guard who is or has been killed or permanently disabled in the line of duty subsequent to January 1, 1973, the death or disability of any emergency medical technician who is killed or permanently disabled or has been killed or permanently disabled in the line of duty subsequent to January 1, 1977, the death or disability of any emergency management rescue specialist who is killed or permanently disabled on or after January 1, 1991, and the death or disability of any state highway employee who is or has been killed or permanently disabled in the line of duty subsequent to January 1, 1990, as well as defraying the expenses and costs incurred by **the department** and the commission in the administration of this part. In addition, **the department** is authorized to accept for deposit in the Georgia State Indemnification Fund any other funds from any other source. All funds appropriated to the Georgia State Indemnification Fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated and shall not lapse.

§ 45-9-84.3. Georgia State Indemnification Fund -- Authority of **department** as to payments from fund

The department is authorized, subject to the limitations contained in this part:

(1) To pay the appropriate indemnification to the persons eligible for indemnification under this part from the proceeds of the Georgia State Indemnification Fund;

(2) To make such payments as may be necessary to defray the expenses and costs incurred by **the department** and the commission in administering this part; and

(3) With the approval of the commission, to utilize the resources of the Georgia State Indemnification Fund to purchase insurance to provide for such indemnification.

§ 45-9-85. Payment of indemnification for death or disability; procedure for making of payments; appeal

(a) Indemnification shall be paid under this article as follows:

(1) In the case of a partial permanent disability suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, or prison guard, the eligible disabled person may elect payment of \$35,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum;

(2) In the case of a partial permanent disability suffered in the line of duty by a state highway employee, the eligible person may elect to receive a payment of \$12,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum;

(3) In the case of a total permanent disability suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, or prison guard, the injured person may elect to receive a payment of \$75,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum;

(4) In the case of a total permanent disability suffered in the line of duty by a state highway employee, the eligible person may elect to receive a payment of \$25,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum;

(5) In the case of death or organic brain damage suffered in the line of duty by a law enforcement officer, firefighter, emergency medical technician, emergency management specialist, or prison guard, payment shall be made to the surviving unremarried spouse or the dependents of the spouse or deceased person as shown in his or her most recent tax return or to the legal guardian of the organically brain damaged person. The surviving unremarried spouse, dependents, or the legal

guardian may elect to receive payment in a lump sum payment of \$100,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; or

(6) In the case of death or organic brain damage suffered in the line of duty by a state highway employee, payment shall be made to the surviving unremarried spouse or the dependents of the spouse or deceased person as shown in his or her most recent tax return or to the legal guardian of the organically brain damaged person. The surviving unremarried spouse, dependents, or the legal guardian may elect to receive payment in a lump sum payment of \$40,000.00 paid in equal monthly installments for five years or a lump sum of such amount reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum.

(b) After **the department**, or the commission upon review of a denial by **the department**, determines that a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, prison guard, or state highway employee has suffered a total permanent disability, a partial permanent disability, organic brain damage, or death in the line of duty, **the department** shall be authorized to make the appropriate payments as provided in subsection (a) of this Code section.

(c) If **the department** denies a claim, any person seeking benefits pursuant to this part may appeal the department's decision to the commission. Any such appeal shall be filed with the commission within 60 days of receipt of **the department's** decision and shall identify the errors in **the department's** decision. Appeals shall be considered by the commission at the commission's semiannual meeting as provided in Code Section 45-9-84.

§ 45-9-86. Application for indemnification

(a) An application for indemnification with respect to a claim for total permanent disability or partial permanent disability of a law enforcement officer, firefighter, prison guard, emergency medical technician, emergency management rescue specialist, or state highway employee shall be submitted by that person unless the person is mentally incompetent, in which case the application may be made on such person's behalf by his or her legal guardian.

(b) An application for indemnification with respect to a claim for the death of a law enforcement officer, firefighter, prison guard, emergency medical technician, emergency management rescue specialist, or state highway employee shall be submitted by or on behalf of the surviving unremarried spouse or dependents eligible under this part.

(c) An application for indemnification with respect to death, organic brain damage, total permanent disability, or partial permanent disability must be made within 24 months after the date of the incident giving rise to the death, organic brain damage, or disability.

§ 45-9-87. Indemnification not taxable

It is the intent of the General Assembly that indemnification paid pursuant to this part shall not be taxable within this state for any purpose.

§ 45-9-88. Indemnification not to be awarded where penal violation, suicide, intentionally self-inflicted injuries, natural causes, or performance of certain routine duties caused or contributed to death or disability

(a) No indemnification shall be awarded to any person otherwise entitled thereto who violates a penal law of this state which violation caused or contributed to the death or disability of the officer.

(b) Notwithstanding any other provision of this article, no payment shall be authorized if death, organic brain damage, total permanent disability, or partial permanent disability occurs from suicide, intentionally self-inflicted injuries, natural causes, or the performance of routine duties which would not be considered strenuous or dangerous by a reasonable person; provided, however, that this subsection shall not preclude **the department** or the commission from considering competent, independent medical evidence as to whether a heart attack that occurs shortly after fighting a fire was caused by the strain of fighting the fire.

§ 45-9-89. Annual report to General Assembly

The commission shall annually file a report of its activities with the General Assembly, which report shall include the amount of funds paid under the program of indemnification. It shall also include a copy of each order providing for payment or a summary of each such order giving all pertinent details.

§ 45-9-90. Giving of false information or testimony

(a) Any person who shall knowingly give false information or false testimony causing or intended to cause the payment of indemnification which would not otherwise be justified under this part shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony.

§ 45-9-100. Purpose

The purpose of this part is to implement the constitutional amendment ratified November 7, 2000, authorizing the General Assembly to provide a program of compensation for law enforcement officers who become physically disabled, but not permanently disabled, as a result of physical injury incurred in the line of duty and caused by a willful act of violence and for firefighters who become physically disabled, but not permanently disabled, as a result of physical injury incurred in the line of duty while fighting a fire, which program shall entitle an injured law enforcement officer or firefighter to receive monthly compensation from the state in an amount equal to such person's regular compensation for the period of time that the law enforcement officer or firefighter is physically unable to perform the duties of

his or her employment, not exceeding 12 months, and to provide certain exceptions and limitations with respect to such program of compensation.

§ 45-9-101. Definitions

As used in this part, the term:

(1) "Commission" means the Georgia State Indemnification Commission created in Code Section 45-9-83.

(2) **"Department" means the Department of Administrative Services.**

(3) "Firefighter" means:

(A) Any person who is employed as a professional firefighter on a full-time or part-time basis by any municipal, county, or state government fire department certified in writing by the Georgia Firefighter Standards and Training Council pursuant to Code Section 25-3-22 employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal, county, and state fire prevention codes, enforcing any law pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property;

(B) Any individual serving as an officially recognized or designated member of a legally organized volunteer fire department certified in writing by the Georgia Firefighter Standards and Training Council pursuant to Code Section 25-3-22 who performs any acts or actions while on duty and when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property; or

(C) Any employee at the Georgia Forestry Commission whose job duties include fire mitigation.

(4) "Full-time" means an employee who regularly works 30 hours or more each week.

(5) "In the line of duty" means:

(A) With respect to a volunteer firefighter, while on duty and performing duties during any fire or other emergency or performing duties intended to protect life and property; or

(B) With respect to a law enforcement officer or firefighter, while on duty and performing services for and receiving compensation from the law enforcement or fire service agency which employs such officer or firefighter, while off duty and responding to any situation which would save a life or preserve the peace, or while preventing or attempting to prevent the commission of a crime or fire. A law enforcement officer or firefighter who is performing duties for and receiving compensation from a private employer at the time of such officer's or firefighter's bodily injury, but not permanent disability, shall not be considered in the line of duty

if the officer or firefighter is entitled to workers' compensation benefits from the private employer or the private employer's insurer.

(6) "Injured in the line of duty" means an injury which arises out of or in the course of employment in the line of duty; or, with respect to a firefighter of a legally organized volunteer fire department, such term means an injury while on duty and when responding to a fire or emergency with the volunteer fire department during any fire or other emergency or while performing duties intended to protect life and property. Going to or from work shall not be considered in the line of duty; and going to a legally organized volunteer fire department to begin a service of duty or traveling from such a fire department after duties have been completed or traveling from the scene of a fire, emergency, or other location where duties were being performed and have been completed shall not be considered in the line of duty.

(7) "Law enforcement officer" means any agent or officer of this state, or a political subdivision or municipality thereof, who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the employees designated by the commissioner of juvenile justice of the Department of Juvenile Justice pursuant to paragraph (2) of subsection (i) of Code Section 49-4A-8, which employees have the duty to investigate and apprehend delinquent and unruly children who have escaped from a facility under the jurisdiction of the Department of Juvenile Justice or who have broken the conditions of supervision. Such term also includes members of the Georgia National Guard, the composition of which is set forth in Code Section 38-2-3, who have been called into active state service by the Governor.

(8) "Volunteer firefighter" means a person who is appointed and regularly enrolled as a volunteer with a legally organized fire department; who, as a volunteer firefighter, has and primarily performs the principal responsibility of preventing or suppressing fires; and who satisfies the requirements specified in subparagraph (a)(1)(D) of Code Section 25-3-23.

§ 45-9-102. Payment of compensation; 12 month limitation; benefits subordinate to workers' compensation benefits; appeal of decision

(a) Any law enforcement officer who becomes physically disabled, but not permanently disabled, on or subsequent to July 1, 2001, as a result of a physical injury incurred in the line of duty and caused by a willful act of violence committed by a person other than a fellow employee shall be entitled to receive compensation as provided in this Code section. Any firefighter who becomes physically disabled, but not permanently disabled, on or subsequent to July 1, 2001, as a result of a physical injury incurred in the line of duty while fighting a fire shall be entitled to receive compensation as provided in this Code section. The compensation shall be paid to eligible applicants by the commission from funds appropriated to the commission for such purpose.

(b) Except as otherwise provided in this part, any law enforcement officer or firefighter injured in the line of duty as provided in subsection (a) of this Code section shall receive monthly compensation from the department in an amount equal to such person's regular compensation for the period of time that the law

enforcement officer or firefighter is physically unable to perform the duties of his or her employment; provided, however, that such benefits provided pursuant to this Code section for injuries resulting from a single incident shall not be granted for more than a total of 12 months. For purposes of this subsection, the regular compensation of a volunteer firefighter covered under subparagraph (2)(B) of Code Section 45-9-101 shall be deemed to be the Georgia average weekly earnings of production workers in manufacturing industries for the immediately preceding calendar year as published by the Georgia Department of Labor. A law enforcement officer or firefighter shall be required to submit to the department satisfactory evidence of such disability. A volunteer firefighter shall not be considered disabled once he or she is able to perform the duties of his or her regular employment or equivalent thereof.

(c) Benefits made available under this Code section shall be subordinate to any workers' compensation benefits, disability and other compensation benefits from the person's employer which the law enforcement officer or firefighter is awarded and shall be limited to the difference between the amount of workers' compensation benefits and other compensation benefits actually paid and the amount of the law enforcement officer's or firefighter's regular compensation; provided, however, that benefits shall never exceed the person's regular compensation minus the maximum weekly workers' compensation benefit level for that person whether or not workers' compensation is available. For the purposes of this subsection, the regular compensation of a firefighter covered under subparagraph (2)(B) of Code Section 45-9-102 shall be deemed to be the Georgia average weekly earnings of production workers in manufacturing industries for the immediately preceding calendar year as published by the Georgia Department of Labor.

(d) A law enforcement officer or firefighter who collects benefits pursuant to this Code section shall not be entitled to any benefits under Code Section 45-7-9.

(e) A law enforcement officer or firefighter who is disabled and who receives indemnification under Part 1 of this article as a result of an incident shall not be entitled to any compensation under this Code section for the disability resulting from the same incident. A law enforcement officer or firefighter who initially receives benefits under this Code section but who is determined subsequently to be entitled to benefits under Part 1 of this article with respect to the same incident or whose beneficiary is determined subsequently to be entitled to benefits under Part 1 of this article shall be entitled only to the amount equal to the benefits to which the person would be entitled under Part 1 reduced by the total amount of benefits received under this Code section.

(f) After **the department**, or the commission upon review of a denial by **the department**, determines that a law enforcement officer has been temporarily disabled due to a willful act of violence or that a firefighter has been temporarily disabled while fighting a fire and is entitled to indemnification under this part, **the department** shall be authorized to make the appropriate payments to the temporarily disabled law enforcement officer or firefighter.

(g) If **the department** denies a claim, any person seeking benefits pursuant to this part may appeal **the department's** decision to the commission. Any such appeal shall be filed with the commission within 60 days of receipt of **the department's** decision and shall identify the errors in **the department's** decision. Appeals shall be

considered by the commission at the commission's semiannual meeting as provided in Code Section 45-9-84.

§ 45-9-103. Submission of application

An application for compensation with respect to a claim filed on or after July 1, 2001, for the temporary disability of a law enforcement officer or firefighter shall be submitted by that person within 60 days from the date of the incident resulting in disability.

§ 45-9-104. Compensation not to be awarded where penal violation, intentionally self-inflicted injuries, natural causes, or performance of certain routine duties caused or contributed to disability

(a) No compensation shall be awarded to any person otherwise entitled thereto who violates a penal law of this state which violation caused or contributed to the disability of the law enforcement officer or firefighter.

(b) Notwithstanding any other provision of this article, no payment shall be authorized if disability occurs from intentionally self-inflicted injuries or natural causes or while performing routine duties which would not be strenuous or dangerous if performed by persons of average physical abilities.

§ 45-9-105. Giving of false information or testimony; penalty

(a) Any person who shall knowingly give false information or false testimony causing or intending to cause the payment of compensation which would not otherwise be justified under this part shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony.

GENERAL (EMPLOYEE) LIABILITY

§ 45-9-1. General provisions; disclosure of insurance or indemnification in legal action

(a) In addition to any other compensation which may be paid to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the executive, judicial, or legislative branch of government of this state, each such agency, board, bureau, commission, department, or authority is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity or to formulate sound programs of self-insurance utilizing funds available to such agency, board, bureau, commission, department, or authority, insuring or indemnifying such officers, officials, or employees to the extent that they are not immune from liability against personal liability for damages arising out of the performance of their duties or in any way connected therewith. Such policies of liability insurance, contracts of indemnity, or programs of self-insurance may also provide for reimbursement to an

officer, official, or employee of any agency, board, bureau, commission, department, or authority of the state for reasonable legal fees and other expenses incurred in the successful defense of any criminal proceeding, including, but not limited to, any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action whether formal or informal where such action arises out of the performance of his or her official duties. In addition, in the case of an officer, official, or employee who is required to maintain a professional license, such reimbursement may also be provided for legal fees and other expenses so incurred in the successful defense of a charge arising out of the performance of his or her official duties in proceedings before a professional licensing board, disciplinary board or commission, or other similar body. Legal fees and other expenses shall be subject to adjustment by and the approval of the Attorney General.

(b) Such agencies, boards, bureaus, commissions, departments, or authorities may expend federal and state or other available funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of such agency, board, bureau, commission, department, or authority.

(c) For the purpose of this article, the term "agency" shall specifically include, but shall not be limited to, public retirement systems of state-wide application established by the laws of this state, but shall not include counties or municipalities; provided, however, that the employees of community service boards, county departments of health, and county departments of family and children services as well as the members of the boards of said departments shall be considered to be state employees or officials for the purpose of this article. In order to facilitate the administration of liability coverage or other insurance coverages provided the community service boards, the Department of Behavioral Health and Developmental Disabilities shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by **the Department of Administrative Services**. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of family and children services, the Department of Human Services shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by **the Department of Administrative Services**. In order to facilitate the administration of liability coverage or other insurance coverages provided county departments of health, the Department of Community Health shall designate a central office which shall be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by **the Department of Administrative Services**.

(d) The existence of such insurance or indemnification shall not be disclosed or suggested in any action brought against such individual.

§ 45-9-2. Members of organized militia serving on state active duty

Members of the organized militia who are serving on state active duty upon orders of the Governor may be provided protection against personal liability for damages sustained by third parties and arising out of the performance of such members' duties while serving on state active duty. At the option of the adjutant general,

members of the organized militia who are performing their duties in connection with domestic action projects may also be provided protection against personal liability for damages sustained by third parties arising out of the performance of such members' duties. **The commissioner of administrative services** shall prescribe the terms and conditions under which such personnel may be covered by any liability insurance policy or contract of indemnity or other like or similar programs administered by **the commissioner** pursuant to this article to provide such protection.

§ 45-9-3. Insurance and other protections afforded personnel employed by district attorney

Personnel employed by the district attorneys of the state, irrespective of the source of the funds used to pay such personnel, may be covered by any liability insurance policy or contract of indemnity, reimbursement, or other like or similar programs administered by **the commissioner** pursuant to this article and, for the purpose of this article, such personnel employed by a district attorney shall be considered to be state employees. **The commissioner of administrative services** shall prescribe the terms and conditions under which any liability insurance policy or contract of indemnity, reimbursement, or other like or similar programs administered by **the commissioner** pursuant to this article shall be made available to personnel employed by a district attorney. The cost of such liability insurance policy or contract of indemnity, reimbursement, or other like or similar programs shall be paid by the Prosecuting Attorneys' Council of the State of Georgia out of such funds as may be appropriated to or otherwise available for the operations of district attorneys.

§ 45-9-4. **Commissioner of administrative services** to purchase insurance or indemnity contracts; self-insurance program; Hazardous Materials Liability Reserve Fund; insurer becoming insolvent; provision of liability coverage to nonprofit agencies and employees contracting with certain state agencies

(a) When **the commissioner of administrative services** determines that an adequate number of agencies, boards, bureaus, commissions, departments, or authorities of this state have requested **the commissioner** to do so, **the commissioner** shall have the authority to purchase policies of liability insurance, reinsurance, or contracts of indemnity insuring or indemnifying the officers, officials, or employees of such agencies, boards, bureaus, commissions, departments, or authorities against personal liability for damages arising out of the performance of their duties or in any way connected therewith, under a master policy or on a blanket coverage basis with or without deductibles or excess coverage. **The commissioner** may provide for endorsements for contractual liability and, where necessary or convenient to the public functions of the state, **the commissioner** may also provide for additional insureds. In such event, **the commissioner** may alternatively retain all moneys paid to **the Department of Administrative Services** as premiums on such policies of liability insurance or contracts of indemnity, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve fund for the payment of such liability under, and the expenses necessary to administer properly, a self-insurance program. If **the commissioner** decides to institute a self-insurance program, **the commissioner** shall establish and maintain a reserve fund for the payment of liabilities arising out of claims against officers, officials, and employees of the state and for any additional insureds. **The commissioner** shall also charge to state entities such premiums, deductibles, and

other payments taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or self-insurance programs established under this Code section. **The commissioner** is further authorized to establish incentive programs, including differential premium rates based on participation in loss control programs established by **the department**, increased or decreased deductibles based on participation in loss control programs established by **the department**, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the liability trust fund provided for in this Code section. Any amounts held by **the commissioner** which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the self-insurance program. The director of the Office of Treasury and Fiscal Services shall invest these funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the self-insurance program. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this subsection, **the commissioner** shall submit an estimate of the date such funds shall no longer be available for investment. When **the commissioner** wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services.

(b) On April 19, 1994, **the commissioner of administrative services** shall transfer all funds from the Hazardous Materials Liability Reserve Fund into the State Tort Claims Trust Fund established pursuant to Article 2 of Chapter 21 of Title 50.

(c) If the insurer of any liability policy purchased for the benefit of the officers and employees of the state or state authorities shall become or has become insolvent, be placed into receivership, be subject to any other delinquency or bankruptcy proceeding, cancel its policies, or take or have taken against it like actions, **the commissioner of administrative services** may protect such employees against loss by such means as he may determine, including without limitation undertaking to cover, insure, or self-insure the corresponding liabilities and expenses, including without limitation claims, contingent claims, and incurred but unreported claims. However, **the commissioner** shall incur no obligation beyond the funds then available for commitment to the obligation. For these purposes **the commissioner** may proceed against such insurer, its receiver, or other representative and any other appropriate person by means of the state's own claim or by assignment, subrogation, or otherwise.

(d) **The commissioner of administrative services** is authorized in his discretion either to purchase commercial insurance coverage or to self-insure under an existing self-insurance trust fund all foster parents and foster children participating in programs sponsored by the Department of Human Services or in the care and custody of the Department of Human Services upon a request from the commissioner of human services. **The commissioner of administrative services** will establish appropriate premiums and limits applicable to such requested insurance coverage. The Department of Human Services is authorized to pay the premiums for such insurance from available appropriated funds or other available sources of funds.

(e) If requested by the Georgia State Finance and Investment Commission, **the**

commissioner of administrative services is authorized, at **the commissioner's** discretion, to establish a consolidated insurance program to furnish general liability insurance, workers' compensation insurance, builders' risk insurance, or general liability and workers' compensation and builders' risk insurance for all contractors on a construction project (wrap up). The premium for such insurance shall be paid from funds appropriated by the General Assembly to construct the project, and, at the completion of a project, any savings attributable to the consolidated insurance program less administrative costs shall be returned by **the Department of Administrative Services** to the Georgia State Finance and Investment Commission.

(f) **The commissioner of administrative services** is authorized in his or her discretion either to purchase commercial insurance coverage or to self-insure under an existing self-insurance trust fund all attention and contract homeparents and those youth participating in programs sponsored by the Department of Juvenile Justice or in the care and custody of the Department of Juvenile Justice upon a request from the commissioner of juvenile justice. **The commissioner of administrative services** shall establish appropriate premiums and limits applicable to such requested insurance coverage. The Department of Juvenile Justice is authorized to pay the premiums for such insurance from available appropriated funds or other available sources of funds.

(g) The policy of insurance provided for in this Code section may also provide liability coverage to nonprofit agencies and their employees, which agencies have contracted with the Department of Juvenile Justice, the Department of Transportation, or the Department of Human Services to furnish certain services; provided, however, that such liability coverage shall be limited to damages arising out of the authorized use of a state-owned vehicle or a vehicle funded pursuant to subsection (a) of Code Section 49-2-13.1 by an employee of such nonprofit agency during the course of such person's employment with such nonprofit agency and the cost of such insurance furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency before any coverage shall be effective. For the purpose of this Code section, "nonprofit agency" means any nonprofit or charitable organization, association, corporation, partnership, or other entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code.

§ 45-9-4.1. Participation in program of self-insurance by Georgia Correctional Industries Administration; extension of coverage to officers, officials, and employees

The Georgia Correctional Industries Administration, as a body corporate and politic, and as an instrumentality and public corporation of this state, may, at its discretion, participate in any program of self-insurance administered by **the commissioner of administrative services** pursuant to Code Section 45-9-4; and **the commissioner of administrative services** is authorized to extend liability coverage under such program of self-insurance to the officers, officials, or employees of the Georgia Correctional Industries Administration in the same manner as is presently or may hereafter be provided for officers, officials, or employees of any agency, board, bureau, commission, department, or authority pursuant to Code Section 45-9-4.

§ 45-9-4.2. Liability coverage for nonprofit agencies providing services to the developmentally disabled

(a) For the purposes of this Code section, the term "nonprofit agency" means a nonprofit or charitable organization, association, corporation, partnership, or other

entity registered pursuant to Section 501(c)(3) of the Internal Revenue Code.

(b) Nonprofit agencies and their employees, which agencies have contracted with the Department of Behavioral Health and Developmental Disabilities to furnish certain services to the developmentally disabled or have subcontracted with similar nonprofit agencies for the same, shall be provided protection against personal liability for damages sustained by third parties arising out of the provision of authorized services to the developmentally disabled by an employee of such agency during the course of such person's employment with such nonprofit agency. **The commissioner of administrative services** shall prescribe the terms and conditions under which such nonprofit agencies and their employees shall be covered by any liability insurance policy or contract of indemnity or similar program administered by **the commissioner** pursuant to this article to provide such protection, provided the cost of such insurance, indemnity, or similar program furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency.

§ 45-9-5. Article not waiver of immunity from action or provision of liability insurance protection

Nothing in this article shall constitute a waiver of the immunity of the state from any action. The exercise of authority provided in this article shall not constitute the provision of liability insurance protection under Article I, Section II, Paragraph IX of the Constitution.

STATE TORT CLAIMS (GEORGIA TORT CLAIMS ACT) TRUST FUND

§ 50-21-20. Short title

This article shall be known and may be cited as "The Georgia Tort Claims Act."

§ 50-21-21. Legislative intent

(a) The General Assembly recognizes the inherently unfair and inequitable results which occur in the strict application of the traditional doctrine of sovereign immunity. On the other hand, the General Assembly recognizes that, while private entrepreneurs voluntarily choose the ambit of their activity and can thereby exert some control over their exposure to liability, state government does not have the same flexibility. In acting for the public good and in responding to public need, state government must provide a broad range of services and perform a broad range of functions throughout the entire state, regardless of how much exposure to liability may be involved. The exposure of the state treasury to tort liability must therefore be limited. State government should not have the duty to do everything that might be done. Consequently, it is declared to be the public policy of this state that the state shall only be liable in tort actions within the limitations of this article and in accordance with the fair and uniform principles established in this article.

(b) The General Assembly also recognizes that the proper functioning of state government requires that state officers and employees be free to act and to make decisions, in good faith, without fear of thereby exposing themselves to lawsuits and without fear of the loss of their personal assets. Consequently, it is declared to be the public policy of this state that state officers and employees shall not be subject

to lawsuit or liability arising from the performance or nonperformance of their official duties or functions.

(c) All of the provisions of this article should be construed with a view to carry out this expression of the intent of the General Assembly.

§ 50-21-22. Definitions

As used in this article, the term:

(1) "Claim" means any demand against the State of Georgia for money only on account of loss caused by the tort of any state officer or employee committed while acting within the scope of his or her official duties or employment.

(2) "Discretionary function or duty" means a function or duty requiring a state officer or employee to exercise his or her policy judgment in choosing among alternate courses of action based upon a consideration of social, political, or economic factors.

(3) "Loss" means personal injury; disease; death; damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death; pain and suffering; mental anguish; and any other element of actual damages recoverable in actions for negligence.

(3.1) "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

(4) "Person" means a natural person, corporation, firm, partnership, association, or other such entity.

(5) "State" means the State of Georgia and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions, but does not include counties, municipalities, school districts, other units of local government, hospital authorities, or housing and other local authorities.

(6) "State government entity" means a state office, agency, authority, department, commission, board, division, instrumentality, or institution.

(7) "State officer or employee" means an officer or employee of the state, elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation, but the term does not include an independent contractor doing business with the state. The term state officer or employee also includes any natural person who is a member of a board, commission, committee, task force, or similar body established to perform specific tasks or advisory functions, with or without compensation, for the state or a state government entity, and any natural person who is a volunteer participating as a volunteer, with or without compensation, in a structured volunteer program organized, controlled, and directed by a state government entity for the purposes of carrying out the functions of the state entity. This shall include any health care provider and any volunteer when providing services pursuant to Article 8 of Chapter 8 of Title 31. An employee shall also include foster parents and foster children. Except as otherwise provided for in this paragraph, the term shall not

include a corporation whether for profit or not for profit, or any private firm, business proprietorship, company, trust, partnership, association, or other such private entity.

§ 50-21-23. Limited waiver of sovereign immunity

(a) The state waives its sovereign immunity for the torts of state officers and employees while acting within the scope of their official duties or employment and shall be liable for such torts in the same manner as a private individual or entity would be liable under like circumstances; provided, however, that the state's sovereign immunity is waived subject to all exceptions and limitations set forth in this article. The state shall have no liability for losses resulting from conduct on the part of state officers or employees which was not within the scope of their official duties or employment.

(b) The state waives its sovereign immunity only to the extent and in the manner provided in this article and only with respect to actions brought in the courts of the State of Georgia. The state does not waive any immunity with respect to actions brought in the courts of the United States.

§ 50-21-24. Exceptions to state liability

The state shall have no liability for losses resulting from:

- (1) An act or omission by a state officer or employee exercising due care in the execution of a statute, regulation, rule, or ordinance, whether or not such statute, regulation, rule, or ordinance is valid;
- (2) The exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved is abused;
- (3) The assessment or collection of any tax or the detention of any goods or merchandise by any law enforcement officer;
- (4) Legislative, judicial, quasi-judicial, or prosecutorial action or inaction;
- (5) Administrative action or inaction of a legislative, quasi-legislative, judicial, or quasi-judicial nature;
- (6) Civil disturbance, riot, insurrection, or rebellion or the failure to provide, or the method of providing, law enforcement, police, or fire protection;
- (7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, or interference with contractual rights;
- (8) Inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by the state to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
- (9) Licensing powers or functions, including, but not limited to, the issuance, denial, suspension, or revocation of or the failure or refusal to issue, deny, suspend,

or revoke any permit, license, certificate, approval, order, or similar authorization;

(10) The plan or design for construction of or improvement to highways, roads, streets, bridges, or other public works where such plan or design is prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation of the plan or design;

(11) Financing regulatory activities, including, but not limited to, examinations, inspections, audits, or other financial oversight activities;

(12) Activities of the Georgia National Guard when engaged in state or federal training or duty, but this exception does not apply to vehicular accidents; or

(13) Any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but the plan or design or both for identifying and preventing the failure or malfunction was prepared in substantial compliance with generally accepted computer and information system design standards in effect at the time of the preparation of the plan or design.

§ 50-21-24.1. Workers' compensation exclusive remedy not waived; workers' compensation fund to pay claims

This article does not waive the workers' compensation exclusive remedy when state employees are injured on the job. The workers' compensation fund shall pay claims for job related injuries and not the State Tort Claims Trust Fund.

§ 50-21-25. Immunity of state officers or employees for acts within scope of official duties or employment; officer or employee not named in action against state; settlement or judgment

(a) This article constitutes the exclusive remedy for any tort committed by a state officer or employee. A state officer or employee who commits a tort while acting within the scope of his or her official duties or employment is not subject to lawsuit or liability therefor. However, nothing in this article shall be construed to give a state officer or employee immunity from suit and liability if it is proved that the officer's or employee's conduct was not within the scope of his or her official duties or employment.

(b) A person bringing an action against the state under the provisions of this article must name as a party defendant only the state government entity for which the state officer or employee was acting and shall not name the state officer or employee individually. In the event that the state officer or employee is individually named for an act or omission for which the state is liable under this article, the state government entity for which the state officer or employee was acting must be substituted as the party defendant.

(c) A settlement or judgment in an action or a settlement of a claim under this article constitutes a complete bar to any further action by the claimant against a state officer or employee or the state by reason of the same occurrence.

§ 50-21-26. Notice of claim against state; time for commencement of action; examination of records to facilitate investigation of claims; confidential nature of documents and information furnished

(a) No person, firm, or corporation having a tort claim against the state under this article shall bring any action against the state upon such claim without first giving notice of the claim as follows:

(1) Notice of a claim shall be given in writing within 12 months of the date the loss was discovered or should have been discovered; provided, however, that for tort claims and causes of action which accrued between January 1, 1991, and July 1, 1992, notice of claim shall be given in writing within 12 months after July 1, 1992;

(2) Notice of a claim shall be given in writing and shall be mailed by certified mail or statutory overnight delivery, return receipt requested, or delivered personally to and a receipt obtained from **the Risk Management Division of the Department of Administrative Services**. In addition, a copy shall be delivered personally to or mailed by first-class mail to the state government entity, the act or omissions of which are asserted as the basis of the claim. Each state government entity may designate an office or officer within that state government entity to whom a notice of claim is to be delivered or mailed;

(3) No action against the state under this article shall be commenced and the courts shall have no jurisdiction thereof unless and until a written notice of claim has been timely presented to the state as provided in this subsection;

(4) Any complaint filed pursuant to this article must have a copy of the notice of claim presented to **the Department of Administrative Services** together with the certified mail or statutory overnight delivery receipt or receipt for other delivery attached as exhibits. If failure to attach such exhibits to the complaint is not cured within 30 days after the state raises such issue by motion, then the complaint shall be dismissed without prejudice; and

(5) A notice of claim under this Code section shall state, to the extent of the claimant's knowledge and belief and as may be practicable under the circumstances, the following:

(A) The name of the state government entity, the acts or omissions of which are asserted as the basis of the claim;

(B) The time of the transaction or occurrence out of which the loss arose;

(C) The place of the transaction or occurrence;

(D) The nature of the loss suffered;

(E) The amount of the loss claimed; and

(F) The acts or omissions which caused the loss.

(b) No action may be commenced under this article following presentation of a notice of claim until either **the Department of Administrative Services** has denied the claim or more than 90 days have elapsed after the presentation of the notice of claim without action by **the Department of Administrative Services**, whichever occurs first.

(c) **The Department of Administrative Services** shall have the authority to examine and copy any records of any state government entity to facilitate the investigation of a claim. Each state government entity shall make available to **the Department of Administrative Services**, incidental to any investigation of a claim, all such records notwithstanding any other provision of law which designates such records as confidential or which prohibits disclosure of such records; provided, however, that **the Department of Administrative Services** shall be bound by such provision of law and shall not make further disclosure of such records except as permitted by such provision of law. **The Department of Administrative Services** may enforce the authority granted under this subsection by subpoena which may be enforced, upon application by the department, by the Superior Court of Fulton County, Georgia, in the same manner as subpoenas issued under Chapter 13 of this title, the "Georgia Administrative Procedure Act," may be enforced.

(d) Any document or information gathered or prepared by **the Department of Administrative Services** in connection with the investigation undertaken as a result of the notice of claim shall be considered privileged and confidential and shall not be subject to discovery by any claimant in any proceeding under this article except as otherwise provided by law.

§ 50-21-27. Retroactive operation; limitations of actions; applicability of other related statutes

(a) It is the specific intent of the General Assembly that this article shall operate retroactively so as to apply to tort claims or causes of action which accrued on or after January 1, 1991. A tort claim or cause of action shall be deemed to have accrued on the date the loss was or should have been discovered. This article shall not apply to tort claims or causes of action which accrued prior to January 1, 1991.

(b) For tort claims and causes of action which accrued between January 1, 1991, and July 1, 1992, any tort action brought pursuant to this article is forever barred unless it is commenced within two years after July 1, 1992.

(c) For tort claims and causes of action which accrue on or after July 1, 1992, any tort action brought pursuant to this article is forever barred unless it is commenced within two years after the date the loss was or should have been discovered.

(d) Statutes of ultimate repose and abrogation, as provided for elsewhere in this Code, shall apply to claims and actions brought pursuant to this article.

(e) All provisions relating to the tolling of limitations of actions, as provided elsewhere in this Code, shall apply to causes of action brought pursuant to this article.

§ 50-21-28. Venue of actions

All tort actions against the state under this article shall be brought in the state or superior court of the county wherein the loss occurred; provided, however, that, in any case in which an officer or employee of the state may be included as a defendant in his individual capacity, the action may be brought in the county of residence of such officer or employee. All actions against the state for losses sustained in any other state shall be brought in the county of residence of any officer or employee residing in this state upon whose actions or omissions the claim against the state is based.

§ 50-21-29. Trial of actions; limitations on amounts of damages; caps to limit total damages regardless of the type claimed

(a) Trial of tort actions against the state under this article shall be conducted by a judge with a jury; provided, however, the parties may agree that the same be tried by a judge without a jury.

(b)(1) Except as provided for in paragraph (2) of this subsection, in any action or claim for damages brought under the provisions of this article, no person shall recover a sum exceeding \$1 million because of loss arising from a single occurrence, regardless of the number of state government entities involved; and the state's aggregate liability per occurrence shall not exceed \$3 million. The existence of these caps on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article.

(2) In any action or claim for damages brought under the provisions of this article pursuant to Article 8 of Chapter 8 of Title 31, any caps specified under Code Section 51-13-1, notwithstanding any applicability limitations specified in such Code section, shall serve as a total cap of all damages, regardless of the type of damages claimed; provided, however, that in no event shall the state's liability exceed the limits provided for in paragraph (1) of this subsection. The existence of this cap on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article.

§ 50-21-30. Punitive or exemplary damages or interest prior to judgment not allowed

No award for damages under this article shall include punitive or exemplary damages or interest prior to judgment.

§ 50-21-31. Interest rate after judgment

In all cases where judgment is obtained under this article, the judgment shall bear interest from the date judgment is entered at the rate of 7 percent per annum.

§ 50-21-32. Signing of pleadings, motions, or other papers

In any claim, action, or proceeding brought under this article, the signature of an attorney or party constitutes a certificate by him or her that he or she has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension,

modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Code section, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorneys' fees.

§ 50-21-33. Liability insurance or self-insurance programs; State Tort Claims Trust Fund; premiums and deductibles; incentive programs authorized; merger of preexisting programs and funds; additional coverages

(a) **The Department of Administrative Services** shall formulate and initiate a sound program providing for liability insurance, self-insurance, or a combination of both to provide for payment of judgments and claims against the state under this article.

(b) **The commissioner of administrative services** shall have the authority to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the state against liabilities arising under this article. In addition or alternatively, **the commissioner of administrative services** may retain all moneys paid to **the Department of Administrative Services** by state government entities as premiums for insurance or indemnity against liabilities arising under this article, and all money specifically appropriated to **the Department of Administrative Services** for the payment of liabilities under this article, all moneys received as interest, and all funds received from other sources to set up and maintain a reserve fund for the payment of judgments and claims against the state under this article and for payment of the expenses necessary to properly administer a self-insurance program. Any amounts held by the State Tort Claims Trust Fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the State Tort Claims Trust Fund. The director of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the State Tort Claims Trust Fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this subsection, **the commissioner** shall submit an estimate of the date such funds shall no longer be available for investment. When **the commissioner** wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services. State agencies which provide services or incur expenses in connection with any claim covered by this article may receive payment from the fund for such services and expenses.

(c) Any reserve fund created under this Code section shall be designated the State Tort Claims Trust Fund.

(d) **The Department of Administrative Services** shall establish and charge to state government entities such premiums, deductibles, and other payments, taking into account any direct appropriations as shall be necessary to maintain the

soundness of the insurance or self-insurance programs established under this Code section. The premiums and deductibles charged to each state government entity may be established on such basis as **the Department of Administrative Services** shall deem appropriate and such basis may include the number of employees, the aggregate annual budget of the state government entity, and unique exposures, loss history, or claims pending against such state government entity. **The department** is further authorized to establish incentive programs including but not limited to differential premium rates based on participation in loss control programs established by **the department**, increased or decreased deductibles based on participation in loss control programs established by **the department**, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the State Tort Claims Trust Fund provided for in this Code section.

(e) Each state government entity shall promptly remit from appropriations or other funds available to it the premium thus established.

(f) Where existing programs have previously been established by **the Department of Administrative Services** for the insurance or self-insurance of the state, state government entities, or state officers or employees, **the commissioner of administrative services** shall be authorized to merge all or part of those programs, including all or part of any self-insurance funds established thereunder, into the State Tort Claims Trust Fund. This shall include, but not be limited to, any funds established by Code Sections 45-9-4 and 50-5-16. In so doing, **the Department of Administrative Services** shall be authorized, through the State Tort Claims Trust Fund, to assume or not assume all or part of existing and potential liabilities of the prior established programs and funds.

(g) As to state government entities for which additional particular coverages are necessary, **the Department of Administrative Services** may provide such additional particular coverages and other terms and conditions of unique exposure particular to one or more state government entities; may provide for endorsements for contract liability; and, where necessary to the public purposes of the state government entity, may also provide for additional insureds.

(h) Nothing in this Code section or in this article shall impose or create any obligation upon other funds of the state.

(i) Funds appropriated to **the Department of Administrative Services** for the State Tort Claims Trust Fund shall be deemed contractually obligated funds held in trust, subject to future legislative change or revision, for the benefit of persons having claims, known or unknown, or judgments payable from the funds and shall not lapse.

§ 50-21-34. Payment of claims or judgments; execution or levy against state funds or property prohibited; amount of fiscal year aggregate liability

(a) No claim or judgment against the state under this article shall be payable except from the State Tort Claims Trust Fund or from any policies of insurance or contracts of indemnity provided under this article.

(b) Nothing in this article shall be construed to authorize any execution or levy against any state property or funds. Execution or levy against state property or funds is expressly prohibited.

(c) Judgments against the state under this article shall be promptly paid by **the commissioner of administrative services** within 60 days after the same become final if funds are available from the State Tort Claims Trust Fund or from other policies of insurance or contracts of indemnity established under this article.

(d) The fiscal year aggregate liability of the state under this article shall never exceed the amount of funds available from the State Tort Claims Trust Fund and any other policies of insurance or contracts of indemnity established under this article. For purposes of this Code section, the term "funds available from the State Tort Claims Trust Fund" means the cash balance in the fund less **the department's** operating expense allocation to the fund for the year. Any judgments obtained in excess of this limitation on annual aggregate liability will not be void. However, such excess judgments shall not be payable unless and until the General Assembly appropriates funds for the payment thereof.

§ 50-21-35. Service of process; mailing of complaint

In all civil actions brought against the state under this article, to perfect service of process the plaintiff must both: (1) cause process to be served upon the chief executive officer of the state government entity involved at his or her usual office address; and (2) cause process to be served upon the **director of the Risk Management Division of the Department of Administrative Services** at his or her usual office address. The time for the state to file an answer shall not begin to run until process has been served upon all required persons. A copy of the complaint, showing the date of filing, shall also be mailed to the Attorney General at his or her usual office address, by certified mail or statutory overnight delivery, return receipt requested and there shall be attached to the complaint a certificate that this requirement has been met.

§ 50-21-36. Settlement of claims

The commissioner of the Department of Administrative Services, or his or her delegate, shall have the authority, within the limits provided in this article, to make settlement of claims, causes of action, and actions under this article.

§ 50-21-37. Hold harmless and indemnification agreements

(a) If a state government entity enters into or is the beneficiary of any agreement under which a third party agrees to hold a state government entity or the State Tort Claims Trust Fund harmless or to indemnify a state government entity or the State Tort Claims Trust Fund, or to provide insurance for those purposes, then the third party or the insurer, as the case may be, shall be liable to the State Tort Claims Trust Fund in accordance with such agreement or contract of insurance, for reimbursement of the amount of any disbursements from the State Tort Claims Trust Fund in satisfaction of any liability, whether established by judgment or settlement in accordance with this article, to the extent of the hold harmless obligation or requirement to procure insurance undertaken under such agreement or contract of insurance obtained pursuant to such agreement. The liability limits specified under Code Section 50-21-29 shall not be increased by the existence of hold harmless or

indemnity obligations in such contractual agreements or by the obligation to procure insurance for such purposes or by the limits set forth in any such contractual agreement or contract of insurance procured pursuant thereto.

(b) No policy of insurance shall be delivered in this state which negates the provisions of this Code section or which provides that the limits of the policy are excess over amounts payable from the State Tort Claims Trust Fund under this Code section.

STATE AUTHORITY OPERATIONAL LIABILITY

§ 50-5-16. Liability insurance and self-insurance for state authorities; how program funded; incentive programs; incentive programs authorized; deduction of unpaid amounts; reserves

(a) **The commissioner of administrative services** may establish a program of liability insurance and self-insurance for state authorities.

(b) State funds may be appropriated for the program, but **the commissioner** shall charge such premiums, deductibles, and other payments as **the commissioner** determines necessary or useful. **The commissioner** is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by **the department**, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, **the department** is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. From the funds available to **the commissioner**, **the commissioner** shall establish such reserves as **the commissioner** determines necessary, purchase commercial policies, employ consultants, and otherwise administer the program. Any amounts held by the liability insurance or self-insurance funds which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in trust accounts for credit only to the liability insurance and self-insurance funds. The director of the Office of Treasury and Fiscal Services shall invest the liability insurance and self-insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the liability insurance and self-insurance funds. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, **the commissioner** shall submit an estimate of the date such funds shall no longer be available for investment. When **the commissioner** wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services.

(c) **The commissioner** may generally provide for insurance or self-insurance under such terms and conditions as he determines, and he may provide for particular coverages and other terms and conditions of the unique exposures particular to one or more authorities. **The commissioner** may provide for endorsements for contract liability and, where necessary or convenient to the public functions of an authority,

he may also provide for additional insureds.

(d) Where existing programs of insurance and self-insurance have been established among state authorities by contract, **the commissioner** may arrange with such authorities to replace the existing programs with such programs as he may establish. In doing so he may assume existing and potential liabilities of the established programs. To the extent that funds of the existing programs are not necessary for such purposes, **the commissioner** may agree to the refund of such funds.

(e) Nothing in this Code section or in any related act of **the commissioner** or the participating authorities shall be construed as waiving any immunity or privilege of any kind now or hereafter enjoyed by the state or the state authorities, including without limitation defenses under the Eleventh Amendment of the Constitution of the United States, sovereign immunity, or any other legal or factual defense, privilege, or immunity which the state or a participating authority may enjoy or assert. The intent of this authorization is to provide for protection only in the absence of such defenses.

(f) Similarly, nothing in this Code section or in any related act of **the commissioner** or participating authorities shall pledge or be deemed to pledge the credit of the state. No obligation shall arise beyond the limits of liability established by **the commissioner** or beyond such other terms and conditions as he may establish, and no obligation shall be imposed or created upon other funds of the state or upon other funds of the participating authorities.

(g) Nothing in the program of insurance or self-insurance shall cause one authority to be liable for claims of another or otherwise expose the assets of one authority to claims of liability respecting another authority.

EDUCATORS PROFESSIONAL LIABILITY INSURANCE

§ 20-2-930. Professional liability insurance coverage for teachers and other school personnel

(a) For purposes of this Code section, the term:

(1) "Certificated personnel" means all teachers, principals, and other education personnel certificated by the Professional Standards Commission.

(2) "Student teacher" means a college or university student in an education degree program in a unit of the University System of Georgia or in a private postsecondary institution who, as part of the degree program, is in a local school system in a classroom setting providing instruction to students and being mentored by a teacher.

(b) **The Department of Administrative Services** shall be authorized to purchase or provide a policy or policies of professional liability insurance, subject to appropriations by the General Assembly, insuring certificated personnel who are employed by a local school system and student teachers. Such policy or policies shall protect against damages arising out of the performance of their duties or in any way connected therewith. The amount of such insurance and the appropriate coverages shall be in the discretion of **the Department of Administrative Services**, subject

to specific appropriations by the General Assembly.

(c) Insurance coverage provided pursuant to this Code section shall automatically cover all certificated personnel who are employed by a local school system and student teachers and shall be at no cost to such certificated personnel or student teachers.

(d) The program of insurance under this part shall be administered by **the Department of Administrative Services** and such department shall be authorized to promulgate any necessary rules and regulations to implement such program.

(e) The program of insurance shall be effective for insurance coverage of certificated personnel and student teachers no later than July 1, 2005.

STATE INSURANCE & HAZARD RESERVE (PROPERTY) FUND

§ 50-16-8. Insurance of state property required; self-insurance program authorized

The Governor shall keep insured all the insurable property of the state including, but not limited to, the public buildings and the contents thereof. The Governor is authorized to draw his warrant upon the state treasury annually for such sums as may be necessary to keep the insurable property of the state adequately protected by insurance. The Governor, in keeping the state's property insured, shall implement a sound program of self-insurance as provided in Code Sections 50-16-9 through 50-16-11 which may include assuming by the state some, or all, of the various risks or hazards under such plan of self-insurance.

§ 50-16-9. Formulation of self-insurance plan for state's properties; incentive programs authorized

(a) **The Department of Administrative Services** may formulate and initiate a plan of self-insurance for the state's properties. The department shall cause:

(1) A complete appraisal to be made of all the state's insurable property as to value;

(2) A complete classification to be made of all the state's insurable property by type of risk; and

(3) A determination and recommendation to be made of the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the minimum claim to be paid on each risk, the type of additional or excess insurance coverage that may be required, the premiums to be charged, and any deductibles to be paid by state agencies and authorities.

(b) **The department** is further authorized to establish incentive programs, including differential premium rates based on participation in loss control programs established by **the department**, increased or decreased deductibles based on participation in loss control programs established by **the department**, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, **the department** is authorized to deduct any unpaid amounts from the nonpaying

agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the state insurance and hazard reserve fund provided for in this chapter.

(c) Upon the formulation of a plan of self-insurance based on the foregoing determinations made and submitted by **the Department of Administrative Services**, the Governor, by executive order, may establish and effectuate a plan of self-insurance; and the General Assembly from time to time shall provide and maintain by appropriation an insurance reserve fund.

§ 50-16-11. Employment of personnel to carry out self-insurance plans

The Department of Administrative Services is authorized and empowered to employ, as a regular member of its staff, persons with expert knowledge, training, and experience in underwriting and planning and such other personnel, including temporary professional insurance engineers and actuaries, as are necessary to carry out the details provided in Code Section 50-16-9.

§ 50-16-11.1. Commercial property policies for coverage of buildings, contents, and other property owned by community service boards

The Department of Administrative Services is authorized to assist and coordinate the purchase of a commercial property policy for coverage for the buildings, contents, and other property owned by community service boards. The payment of the premium to the commercial carrier shall be the responsibility of the community service boards.

§ 50-16-12. Authorization for state insurance and hazard reserve fund to retain certain moneys for the payment of liabilities and expenses; deposit of investment funds with Office of Treasury and Fiscal Services

In order to finance the continuing liability established with other agencies of state government, the state insurance and hazard reserve fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the state insurance and hazard reserve fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the state insurance and hazard reserve fund. The director of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the state insurance and hazard reserve fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, **the commissioner** shall submit an estimate of the date such funds shall no longer be available for investment. When **the commissioner** wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services.

§ 50-16-13. Authorization for state insurance and hazard reserve fund to contract for fire protection systems; cost limitation; approval by legislative subcommittees

The state insurance and hazard reserve fund is authorized to execute contracts with reliable manufacturers of automatic sprinkler systems and other fixed fire protection systems for the installation of approved fire protection systems for all properties of the state, authorities, instrumentalities, bureaus, and commissions which are insured or which may become insured in the future under the state self-insurance program. The cost shall be borne by the state insurance and hazard reserve fund and may not exceed \$100,000.00 in any one fiscal year. The fund shall be the sole judge as to where and to what extent such fire protection systems need to be installed for the protection of lives and property. All expenditures for the installation of fire protection systems and equipment shall be approved by the fiscal affairs subcommittees of the Senate and House of Representatives.

UNEMPLOYMENT COMPENSATION FUND

§ 45-9-110. Authorization for consolidation; billing procedure; reserve fund; investment of funds; contracting for services; provision of unemployment compensation benefits to certain county employees

(a) **The commissioner of administrative services** shall have the authority to consolidate the processing of and response to unemployment compensation claims being performed on July 1, 1985, by each individual agency, department, board, bureau, commission, and authority of the state along with the payment to the Department of Labor of this state of all moneys due and owing as a result of paid unemployment compensation claims and shall bill each department, agency, board, bureau, commission, or authority of the state for claims paid and for the reasonable cost of administering the program.

(b) **The commissioner** may retain all moneys paid to **the Department of Administrative Services** in response to such billings, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve fund for the purpose of making payments to the Department of Labor of this state and defraying the expenses necessary to administer the program. **The commissioner** shall invest any such moneys in the same manner as other moneys in his possession.

(c) **The commissioner** is authorized, in his discretion, to contract for any or all of the services necessary to carry out the functions enumerated in this article.

(d) **The commissioner of administrative services** shall have the authority to provide unemployment compensation benefits insurance to all of the county departments of health, county departments of family and children services, and community service boards. The commissioner of community health shall establish a procedure to provide **the Department of Administrative Services** all of the underwriting information required, including but not limited to payroll data each quarter for the service centers, and shall collect the unemployment premium from county departments of health and remit the premium to **the Department of Administrative Services**. The commissioner of human services shall establish a procedure to provide **the Department of Administrative Services** all of the

underwriting information required, including but not limited to payroll data each quarter for the service centers, and shall collect the unemployment premium from county departments of family and children services and remit the premium to the Department of Administrative Services. The commissioner of behavioral health and developmental disabilities shall establish a procedure to provide **the Department of Administrative Services** all of the underwriting information required, including but not limited to payroll data each quarter for the service centers, and shall collect the unemployment premium from community service boards and remit the premium to **the Department of Administrative Services**. All of the county departments of health, county departments of family and children services, and community service boards shall participate in such unemployment compensation benefit insurance program.

WORKERS' COMPENSATION TRUST FUND

§ 50-5-12. Formulation of self-insurance program for workers' compensation for state employees; return to work program

The Department of Administrative Services shall formulate and initiate a sound program of self-insurance for workers' compensation benefits for all employees of the state, including employees of authorities. In formulating the self-insurance program, **the department** is directed to establish a return to work program that promotes the return of an employee to employment by creating transitional employment prior to full recovery by providing temporary assignments for an employee that are meaningful and medically approved until the employee can return to his or her regularly assigned duties. If an agency or authority does not allow an employee to engage in transitional employment under the return to work program, the number of authorized positions in the budget for the agency or authority shall be decreased by the number of employees collecting workers' compensation not engaged in return to work employment for whom return to work plans have been developed.

§ 50-5-13. Extent, premiums, deductibles, benefit amounts, reserves, and excess coverage for self-insurance program; incentive programs authorized; deduction of unpaid amounts

The department shall determine the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the premiums to be charged and any deductibles to be paid by agencies and authorities, the amount of benefits to be paid within the scope of the workers' compensation statutes, and type of addition or excess insurance coverage that may be required. **The department** is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by **the department**, increased or decreased deductibles based on participation in loss control programs established by **the department**, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, **the department** is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the workers' compensation trust fund provided for in Code Section 50-5-14.

§ 50-5-14. Authorization for Workers' Compensation Trust Fund to retain moneys as reserve; procedures for use of investment moneys

In order to finance the continuing liability established with other agencies of state government, the Workers' Compensation Trust Fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance and all moneys received as interest and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the Workers' Compensation Trust Fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the Workers' Compensation Trust Fund. The director of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the Workers' Compensation Trust Fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, **the commissioner** shall submit an estimate of the date such funds shall no longer be available for investment. When **the commissioner** wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services.