

By: Representative Tullos

To: Judiciary A

## HOUSE BILL NO. 144

1 AN ACT TO AMEND SECTION 11-46-17, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE GOVERNMENTAL ENTITIES COVERED BY THE TORT CLAIMS ACT TO  
3 CARRY NO LESS THAN \$500,000 IN LIABILITY COVERAGE; TO AMEND  
4 SECTION 11-46-19, MISSISSIPPI CODE OF 1972, TO REQUIRE THE BOARD  
5 TO OBTAIN INSURANCE THAT HAS NO LESS THAN \$500,000 LIABILITY  
6 COVERAGE; TO BRING FORWARD SECTION 11-46-20, MISSISSIPPI CODE OF  
7 1972, WHICH PROVIDES THAT THE TORT CLAIMS BOARD IS CHARGED WITH  
8 THE RESPONSIBILITY TO REGULATE ALL LIABILITY COVERAGE OF  
9 GOVERNMENTAL ENTITIES, FOR PURPOSES OF AMENDMENT; AND FOR RELATED  
10 PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** Section 11-46-17, Mississippi Code of 1972, is  
13 amended as follows:

14 11-46-17. (1) There is hereby created in the State Treasury  
15 a special fund to be known as the "Tort Claims Fund."

16 All monies that the Department of Finance and Administration  
17 receives and collects under the provisions of subsection (2) of  
18 this section and all funds that the Legislature appropriates for  
19 use by the board in administering the provisions of this chapter  
20 shall be deposited in the fund. All monies in the fund may be  
21 expended by the board for any and all purposes for which the board  
22 is authorized to expend funds under the provisions of this



23 chapter. All interest earned from the investment of monies in the  
24 fund shall be credited to the fund. Monies remaining in the fund  
25 at the end of a fiscal year shall not lapse into the State General  
26 Fund.

27 (2) From and after July 1, 1993, each governmental entity  
28 other than political subdivisions shall participate in a  
29 comprehensive plan of self-insurance or one or more policies of  
30 liability insurance or combination of the two (2), all to be  
31 administered by the Department of Finance and Administration. The  
32 plan shall provide no less than Five Hundred Thousand Dollars  
33 (\$500,000.00) in coverage to each of such governmental entities  
34 for every risk for which the board determines the respective  
35 governmental entities to be liable in the event of a claim or suit  
36 for injuries under the provisions of this chapter, including  
37 claims or suits for injuries from the use or operation of motor  
38 vehicles; the board may allow the plan to contain any reasonable  
39 limitations or exclusions not contrary to Mississippi state  
40 statutes or case law as are normally included in commercial  
41 liability insurance policies generally available to governmental  
42 entities. The plan may also provide coverage for liabilities  
43 outside the provisions of this chapter, including, but not limited  
44 to, liabilities arising from Sections 1983 through 1987 of Title  
45 42 of the United States Code and liabilities from actions brought  
46 in foreign jurisdictions, and the board shall establish limits of  
47 coverage for such liabilities. Each governmental entity



48 participating in the plan shall make payments to the board in such  
49 amounts, times and manner determined by the board as the board  
50 deems necessary to provide sufficient funds to be available for  
51 payment by the board of the costs it incurs in providing coverage  
52 for the governmental entity. Each governmental entity of the  
53 state other than the political subdivisions thereof participating  
54 in the plan procured by the board shall be issued by the board a  
55 certificate of coverage whose form and content shall be determined  
56 by the board but which shall have the effect of certifying that,  
57 in the opinion of the board, each of such governmental entities is  
58 adequately insured.

59       Before July 1, 1993, the Board of Trustees of State  
60 Institutions of Higher Learning may provide liability coverage for  
61 each university, department, trustee, employee, volunteer,  
62 facility and activity as the board of trustees, in its discretion,  
63 shall determine advisable. If liability coverage, either through  
64 insurance policies or self-insurance retention is in effect,  
65 immunity from suit shall be waived only to the limit of liability  
66 established by the insurance or self-insurance program. From and  
67 after July 1, 1993, liability coverage established by the board of  
68 trustees must conform to the provisions of this section and must  
69 receive approval from the board. Should the board reject a plan,  
70 the board of trustees shall participate in the liability program  
71 for state agencies established by the board.



(3) All political subdivisions shall, from and after October 1, 1993, obtain a policy or policies of insurance, establish self-insurance reserves, or provide a combination of insurance and reserves as necessary to cover all risks of claims and suits for which political subdivisions may be liable under this chapter; a political subdivision shall not be required to obtain pollution liability insurance. However, this shall not limit any cause of action against a political subdivision relative to limits of liability under the Tort Claims Act. The policy or policies of insurance or self-insurance may contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to political subdivisions. All the plans of insurance or reserves or combination of insurance and reserves shall be submitted for approval to the board. The board shall issue a certificate of coverage to each political subdivision whose plan it approves in the same manner as provided in subsection (2) of this section. Whenever any political subdivision fails to obtain the board's approval of its plan, the political subdivision shall act in accordance with the rules and regulations of the board and obtain a satisfactory plan of insurance or reserves or combination of insurance and reserves to be approved by the board.

(4) Any governmental entity may purchase liability insurance to cover claims in excess of \* \* \* Five Hundred Thousand Dollars



97 (\$500,000.00) and may be sued by anyone in excess of the amounts  
98 provided for in Section 11-46-15 to the extent of the excess  
99 insurance carried; however, the immunity from suit above the  
100 amounts provided for in Section 11-46-15 shall be waived only to  
101 the extent of excess liability insurance carried.

102 (5) Any two (2) or more political subdivisions may contract  
103 to pool their liabilities as a group under this chapter. The  
104 pooling agreements and contracts may provide for the purchase of  
105 one or more policies of liability insurance or the establishment  
106 of self-insurance reserves or a combination of insurance and  
107 reserves and shall be subject to approval by the board in the  
108 manner provided in subsections (2) and (3) of this section.

109 (6) The board shall have subrogation rights against a third  
110 party for amounts paid out of any plan of self-insurance  
111 administered by the board pursuant to this section on behalf of a  
112 governmental entity that is not a political subdivision as a  
113 result of damages caused under circumstances creating a cause of  
114 action in favor of such governmental entity against a third party.  
115 The board shall deposit in the Tort Claims Fund all monies  
116 received in connection with the settlement or payment of any  
117 claim, including proceeds from the sale of salvage.

118 (7) During fiscal year 2017, the board shall have full  
119 authority to assess agencies and governmental entities as per  
120 Section 11-46-19(1)(r).



121           **SECTION 2.** Section 11-46-19, Mississippi Code of 1972, is  
122 amended as follows:

123           11-46-19. (1) The board shall have the following powers:

124                   (a) To provide oversight over the Tort Claims Fund;

125                   (b) To approve any award made from the Tort Claims  
126 Fund;

127                   (c) To pay all necessary expenses attributable to the  
128 operation of the Tort Claims Fund from such fund;

129                   (d) To assign litigated claims against governmental  
130 entities other than political subdivisions to competent attorneys  
131 unless such governmental entity has a staff attorney who is  
132 competent to represent the governmental entity and is approved by  
133 the board; the board shall give primary consideration to attorneys  
134 practicing in the jurisdiction where the claim arose in assigning  
135 cases; attorneys hired to represent a governmental entity other  
136 than a political subdivision shall be paid according to the  
137 department fee schedule;

138                   (e) To approve all claimants' attorney fees in claims  
139 against the state;

140                   (f) To employ on a full-time basis a staff attorney who  
141 shall possess the minimum qualifications required to be a member  
142 of The Mississippi Bar, and such other staff as it may deem  
143 necessary to carry out the purposes of this chapter; the employees  
144 in the positions approved by the board shall be hired by the



director, shall be employees of the department, and shall be compensated from the Tort Claims Fund;

(g) To contract with one or more reputable insurance consulting firms as may be necessary;

(h) To purchase any policies of liability insurance with no less than Five Hundred Thousand Dollars (\$500,000.00) coverage and to administer any plan of self-insurance or policies of liability insurance required for the protection of the state against claims and suits brought under this chapter;

(i) To expend money from the Tort Claims Fund for the purchase of any policies of liability insurance and the payment of any award or settlement of a claim against the state under the provisions of this chapter or of a claim against any school district, junior college or community college district, or state agency, arising from the operation of school buses or other vehicles, under the provisions of Section 37-41-42;

(j) To cancel, modify or replace any policy or policies of liability insurance procured by the board;

(k) To issue certificates of coverage to governmental entities, including any political subdivision participating in any plan of liability protection approved by the board;

(l) To review and approve or reject any plan of liability insurance or self-insurance reserves proposed or provided by political subdivisions if such plan is intended to



169 serve as security for risks of claims and suits against them for  
170 which immunity has been waived under this chapter;

171 (m) To administer disposition of claims against the  
172 Tort Claims Fund;

173 (n) To withhold issuance of any warrants payable from  
174 funds of a participating state entity should such entity fail to  
175 make required contributions to the Tort Claims Fund in the time  
176 and manner prescribed by the board;

177 (o) To develop a comprehensive statewide list of  
178 attorneys who are qualified to represent the state and any  
179 employee thereof named as a defendant in a claim brought under  
180 this chapter against the state or such employee;

181 (p) To develop a schedule of fees for paying attorneys  
182 defending claims against the state or an employee thereof;

183 (q) To adopt and promulgate such reasonable rules and  
184 regulations and to do and perform all such acts as are necessary  
185 to carry out its powers and duties under this chapter;

186 (r) To establish and assess premiums to be paid by  
187 governmental entities required to participate in the Tort Claims  
188 Fund;

189 (s) To contract with a third-party administrator to  
190 process claims against the state under this chapter;

191 (t) To annually submit its budget request to the  
192 Legislature as a state agency;



(u) To dispose of salvage obtained in settlement or payment of any claim at fair market value by such means and upon such terms as the board may think best; and

(v) To administer the Medical Malpractice Insurance Availability Plan under Section 83-48-5. The provisions of this paragraph (v) shall stand repealed from and after the transfer of the plan's assets and liabilities as provided in Section 83-48-6(i).

(2) Policies of liability insurance purchased for the protection of governmental entities against claims and suits brought under this chapter shall be no less than Five Hundred Thousand Dollars (\$500,000.00) and be purchased pursuant to the competitive bidding procedures set forth in Section 31-7-13.

(3) The department shall have the following powers and duties:

(a) To annually report to the Legislature concerning each comprehensive plan of liability protection established pursuant to Section 11-46-17(2). Such report shall include a comprehensive analysis of the cost of the plan, a breakdown of the cost to participating state entities, and such other information as the department may deem necessary.

(b) To provide the board with any staff and meeting facilities as may be necessary to carry out the duties of the board as provided in this chapter.



(c) To submit the board's budget request for the initial year of operation of the board in order to authorize expenditures for the 1993-1994 fiscal year and for the appropriation of such general funds as shall be required for the commencement of its activities.

**SECTION 3.** Section 11-46-20, Mississippi Code of 1972, is brought forward as follows:

11-46-20. (1) The Tort Claims Board shall be charged with the responsibility to regulate all liability coverage of governmental entities required to have certificates of coverage under this chapter which elect to provide the same through a public entity group or individual self-insurance program. This regulation shall be accomplished through an initial approval as provided in Section 11-46-17 and by ongoing or annual review. Each self-insurance program shall annually submit to the Tort Claims Board the following items within ninety (90) days from the end of the group year:

- (a) An audited financial statement;
- (b) An actuarial valuation;
- (c) Contracts with third-party administrators (if any);
- (d) Excess insurance policies;
- (e) A list of members and premiums due from and collected from each member; and
- (f) Other data as may be required by the Tort Claims Board.



(2) Areas of regulation under this section shall include,  
but not be limited to, the following:

- (a) Financial solvency;
  - (b) Rating plans, rates and rating basis;
  - (c) Assessment plans of public entity groups;
  - (d) Coverages offered and excluded;
  - (e) Deductibles and deductible credits;
  - (f) Proper purchase of excess insurance or reinsurance;
- and
- (g) Review of losses, reserves and expenses annually.

(3) Individual self-insurers and group public entity self-insurers must provide the data requested for the purposes of this section in order to receive continuing approval of the Tort Claims Board and issuance of annual certificates of coverage to the governmental entities involved.

(4) The Tort Claims Board is authorized to assess and charge appropriate fees for the costs of regulation, as determined by the board, to the individual self-insurers and group public entity self-insurers being regulated.

(5) The Tort Claims Board is empowered to:

- (a) Issue cease and desist orders;
- (b) Require rate increases or decreases;
- (c) Require assessments of members of group public entity self-insurers in such amounts as are authorized and required by the board;



267 (d) Require changes in excess insurance or reinsurance;

268 or

269 (e) Take such other actions as deemed necessary by the  
270 board to carry out the provisions of this chapter.

271 **SECTION 4.** This act shall take effect and be in force from  
272 and after July 1, 2025.

