

By: Representative Capps

To: Appropriations

HOUSE BILL NO. 840

1 AN ACT TO AMEND SECTIONS 11-46-17 AND 27-104-31, MISSISSIPPI  
 2 CODE OF 1972, TO CHANGE THE NAME OF THE TORT CLAIMS FUND TO THE  
 3 TORT CLAIMS AND WORKERS' COMPENSATION FUND; TO PROVIDE THAT ALL  
 4 MONIES THAT THE DEPARTMENT OF FINANCE AND ADMINISTRATION RECEIVES  
 5 FROM STATE AGENCIES FOR THE WORKERS' COMPENSATION SELF-INSURANCE  
 6 PROGRAM SHALL BE DEPOSITED INTO THE FUND; TO PROVIDE THAT THE  
 7 MONIES IN THE FUND MAY BE EXPENDED BY THE DEPARTMENT OF FINANCE  
 8 AND ADMINISTRATION TO PAY CLAIMS UNDER THE WORKERS' COMPENSATION  
 9 SELF-INSURANCE PROGRAM, IN ADDITION TO BEING USED TO PAY TORT  
 10 CLAIMS; TO DIRECT THE STATE FISCAL OFFICER TO TRANSFER ALL FUNDS  
 11 IN THE WORKERS' COMPENSATION SELF-INSURANCE FUND ON THE EFFECTIVE  
 12 DATE OF THIS ACT INTO THE TORT CLAIMS AND WORKERS' COMPENSATION  
 13 FUND; TO AMEND SECTION 11-46-19, MISSISSIPPI CODE OF 1972, TO  
 14 CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

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

18 11-46-17. (1) (a) There is \* \* \* created in the State  
 19 Treasury a special fund to be known as the "Tort Claims and  
 20 Workers' Compensation Fund."

21 (b) All \* \* \* monies that the Department of Finance and  
 22 Administration \* \* \* receives and collects under the provisions of  
 23 subsection (2) of this section and all \* \* \* funds that the  
 24 Legislature \* \* \* appropriates for use by the board in  
 25 administering the provisions of this chapter shall be deposited  
 26 into the fund. In addition, all monies that the Department of  
 27 Finance and Administration receives and collects from state  
 28 agencies for the Workers' Compensation Self-Insurance Program  
 29 established under Section 27-104-31 shall be deposited into the  
 30 fund.

31 (c) The monies in the fund may be expended by the board  
 32 for any and all purposes for which the board is authorized to  
 33 expend funds under the provisions of this chapter. In addition,



34 the monies in the fund may be expended by the Department of  
35 Finance and Administration to pay claims under the Workers'  
36 Compensation Self-Insurance Program established under Section  
37 27-104-31.

38           (d) All interest earned from the investment of monies  
39 in the fund shall be credited to the fund. Monies remaining in  
40 the fund at the end of a fiscal year shall not lapse into the  
41 State General Fund.

42           (2) From and after July 1, 1993, each governmental entity  
43 other than political subdivisions shall participate in a  
44 comprehensive plan of self-insurance and/or one or more policies  
45 of liability insurance administered by the Department of Finance  
46 and Administration. The plan shall provide coverage to each of  
47 those governmental entities for every risk for which the board  
48 determines the respective governmental entities to be liable if  
49 there is a claim or suit for injuries under the provisions of this  
50 chapter, including claims or suits for injuries from the use or  
51 operation of motor vehicles; \* \* \* however, \* \* \* the board may  
52 allow the plan to contain any reasonable limitations or exclusions  
53 not contrary to Mississippi state statutes or case law as are  
54 normally included in commercial liability insurance policies  
55 generally available to governmental entities. In addition to the  
56 coverage authorized in the preceding sentence, the plan may  
57 provide coverage for liabilities outside the provisions of this  
58 chapter, including, but not limited to, liabilities arising from  
59 Sections 1983 through 1987 of Title 42 of the United States Code  
60 and liabilities from actions brought in foreign jurisdictions, and  
61 the board shall establish limits of coverage for those  
62 liabilities. Each governmental entity participating in the plan  
63 shall make payments to the board in such amounts, times and manner  
64 determined by the board as the board deems necessary to provide  
65 sufficient funds to be available for payment by the board of such  
66 costs as it incurs in providing coverage for the governmental



67 entity. Each governmental entity of the state other than the  
68 political subdivisions thereof participating in the plan procured  
69 by the board shall be issued by the board a certificate of  
70 coverage whose form and content shall be determined by the board  
71 but which shall have the effect of certifying that in the opinion  
72 of the board each of those governmental entities is adequately  
73 insured.

74 Before July 1, 1993, the Board of Trustees of State  
75 Institutions of Higher Learning may provide such liability  
76 coverage for each university, department, trustee, employee,  
77 volunteer, facility and activity as the board of trustees, in its  
78 discretion, \* \* \* determines advisable. If liability coverage,  
79 either through insurance policies or self-insurance retention is  
80 in effect, immunity from suit shall be waived only to the limit of  
81 liability established by that insurance or self-insurance program.  
82 From and after July 1, 1993, the liability coverage established by  
83 the board of trustees must conform to the provisions of this  
84 section and must receive approval from the board. If the board  
85 rejects the plan, the board of trustees shall participate in the  
86 liability program for state agencies established by the board.

87 (3) All political subdivisions shall, from and after October  
88 1, 1993, obtain such policy or policies of insurance, establish  
89 such self-insurance reserves, or provide a combination of such  
90 insurance and reserves as necessary to cover all risks of claims  
91 and suits for which political subdivisions may be liable under  
92 this chapter; except any political subdivision shall not be  
93 required to obtain pollution liability insurance. However, this  
94 shall not limit any cause of action against the political  
95 subdivision relative to limits of liability under the Tort Claims  
96 Act. The policy or policies of insurance or the self-insurance  
97 may contain any reasonable limitations or exclusions not contrary  
98 to Mississippi state statutes or case law as are normally included  
99 in commercial liability insurance policies generally available to



100 political subdivisions. All such plans of insurance and/or  
101 reserves shall be submitted for approval to the board. The board  
102 shall issue a certificate of coverage to each political  
103 subdivision whose plan of insurance and/or reserves it approves in  
104 the same manner as provided in subsection (2) of this section.  
105 Whenever any political subdivision fails to obtain the board's  
106 approval of any plan of insurance and/or reserves, the political  
107 subdivision shall act in accordance with the rules and regulations  
108 of the board and obtain a satisfactory plan of insurance and/or  
109 reserves to be approved by the board.

110 (4) Any governmental entity of the state may purchase  
111 liability insurance to cover claims in excess of the amounts  
112 provided for in Section 11-46-15 and may be sued by anyone in  
113 excess of the amounts provided for in Section 11-46-15 to the  
114 extent of the excess insurance carried; \* \* \* however, \* \* \* the  
115 immunity from suit above the amounts provided for in Section  
116 11-46-15 shall be waived only to the extent of the excess  
117 liability insurance carried.

118 (5) Any two (2) or more political subdivisions may enter  
119 into agreement and to contract between and among themselves for  
120 the purpose of pooling their liabilities as a group under this  
121 chapter. Those pooling agreements and contracts may provide for  
122 the purchase of one or more policies of liability insurance and/or  
123 the establishment of self-insurance reserves and shall be subject  
124 to approval by the board in the manner provided in subsections (2)  
125 and (3) of this section.

126 (6) The board shall have subrogation rights against a third  
127 party for amounts paid out of any plan of self-insurance  
128 administered by the board under this section in behalf of a  
129 governmental entity as a result of damages caused under  
130 circumstances creating a cause of action in favor of the  
131 governmental entity against a third party. The board shall  
132 deposit in the Tort Claims and Workers' Compensation Fund all



133 monies received in connection with the settlement or payment of  
134 any claim, including proceeds from the sale of salvage.

135 **SECTION 2.** Section 27-104-31, Mississippi Code of 1972, is  
136 amended as follows:

137 27-104-31. (1) The State Fiscal Officer shall have the  
138 following powers and duties, acting through the Insurance  
139 Division:

140 (a) To implement and administer a comprehensive risk  
141 management program for all state agencies, including but not  
142 limited to, the areas of liability insurance and workers'  
143 compensation insurance;

144 (b) To coordinate and administer the Employment  
145 Compensation Revolving Fund for state agencies as directed in  
146 Section 71-5-359(2)(c);

147 (c) To coordinate and administer the liability plans  
148 authorized in Section 11-46-17;

149 (d) To coordinate and administer the workers'  
150 compensation plan for state agencies as a self-insured program and  
151 to determine the feasibility of other self-insured programs for  
152 state agencies;

153 (e) To require of state agencies premium payments or  
154 contributions to self-insurance funds or both necessary to meet  
155 the obligations created by the comprehensive risk management  
156 program. The self-insurance funds created shall be maintained as  
157 separate special funds in the State Treasury or in authorized bank  
158 accounts. \* \* \* All those funds shall be exempt from the  
159 appropriation process. All interest earned from the investment of  
160 monies in the funds shall be credited to the appropriate special  
161 fund. Monies remaining in those special funds at the end of the  
162 fiscal year shall not lapse into the State General Fund. All  
163 funds collected from state agencies as premium payments or  
164 contributions for the Workers' Compensation Self-Insurance Program  
165 shall be deposited into the Tort Claims and Workers' Compensation



166 Fund created under Section 11-46-17. The State Fiscal Officer  
167 shall transfer all funds in the Workers' Compensation  
168 Self-Insurance Fund on the effective date of House Bill Number  
169                   , 2002 Regular Session, into the Tort Claims and Workers'  
170 Compensation Fund. Such funds as required from the Tort Claims  
171 and Workers' Compensation Fund shall be used by the department to  
172 pay claims under the Workers' Compensation Self-Insurance Program;

173           (f) To promulgate and adopt rules and regulations  
174 necessary to effect the provisions of a comprehensive risk  
175 management program; \* \* \*

176           (g) To pay such administrative costs necessary to  
177 insure the successful operation of each program administered by  
178 the insurance division. Those administrative costs shall include  
179 the operating expenses of the division. Each program shall be  
180 assessed their proportionate share of those operating expenses;  
181 and

182           (h) To provide administrative support to the board as  
183 defined in Section 25-15-3.

184           (2) The State Fiscal Officer shall not have the power or  
185 authority to request that bonds be issued or any funds borrowed in  
186 order to implement a comprehensive risk management program or plan  
187 of self-insurance for the state, or any of its political  
188 subdivisions, or to make contributions under Section 11-46-17(2)  
189 to the Tort Claims and Workers' Compensation Fund established  
190 under Section 11-46-17.

191           **SECTION 3.** Section 11-46-19, Mississippi Code of 1972, is  
192 amended as follows:

193           11-46-19. (1) The board shall have the following powers:

194           (a) To provide, together with the Department of Finance  
195 and Administration, oversight over the Tort Claims and Workers'  
196 Compensation Fund;

197           (b) To approve any award made from the Tort Claims and  
198 Workers' Compensation Fund for a claim brought under this chapter;



199 (c) To pay, together with the Department of Finance and  
200 Administration, all necessary expenses attributable to the  
201 operation of the Tort Claims and Workers' Compensation Fund from  
202 the fund;

203 (d) To assign litigated claims against governmental  
204 entities other than political subdivisions to competent attorneys  
205 unless the governmental entity has a staff attorney who is  
206 competent to represent the governmental entity and is approved by  
207 the board; the board shall give primary consideration to attorneys  
208 practicing in the jurisdiction where the claim arose in assigning  
209 cases; attorneys hired to represent a governmental entity other  
210 than a political subdivision shall be paid according to the  
211 department fee schedule;

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

214 (f) To employ on a full-time basis a staff attorney who  
215 shall possess the minimum qualifications required to be a member  
216 of the Mississippi Bar, and such other staff as it may deem  
217 necessary to carry out the purposes of this chapter; the employees  
218 in the positions approved by the board shall be hired by the  
219 director, shall be employees of the department, and shall be  
220 compensated from the Tort Claims and Workers' Compensation Fund;

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

223 (h) To purchase any policies of liability insurance and  
224 to administer any plan of self-insurance or policies of liability  
225 insurance required for the protection of the state against claims  
226 and suits brought under this chapter;

227 (i) To expend money from the Tort Claims and Workers'  
228 Compensation Fund for the purchase of any policies of liability  
229 insurance and the payment of any award or settlement of a claim  
230 against the state under the provisions of this chapter or of a  
231 claim against any school district, junior college or community



232 college district, or state agency, arising from the operation of  
233 school buses or other vehicles, under the provisions of Section  
234 37-41-42;

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

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

240 (l) To review and approve or reject any plan of  
241 liability insurance or self-insurance reserves proposed or  
242 provided by political subdivisions if the plan is intended to  
243 serve as security for risks of claims and suits against them for  
244 which immunity has been waived under this chapter;

245 (m) To administer disposition of claims brought under  
246 this chapter against the Tort Claims and Workers' Compensation  
247 Fund;

248 (n) To withhold issuance of any warrants payable from  
249 funds of a participating state entity if the entity fails to make  
250 required contributions to the Tort Claims and Workers'  
251 Compensation Fund in the time and manner prescribed by the board;

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

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

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

261 (r) To establish and assess premiums to be paid by  
262 governmental entities required by this chapter to participate in  
263 the Tort Claims and Workers' Compensation Fund;





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

266 (t) To annually submit its budget request to the  
267 Legislature as a state agency; and

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

271 (2) Policies of liability insurance purchased for the  
272 protection of governmental entities against claims and suits  
273 brought under this chapter shall be purchased according to the  
274 competitive bidding procedures set forth in Section 31-7-13.

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

277 (a) To annually report to the Legislature concerning  
278 each comprehensive plan of liability protection established under  
279 Section 11-46-17(2). The report shall include a comprehensive  
280 analysis of the cost of the plan, a breakdown of the cost to  
281 participating state entities, and such other information as the  
282 department \* \* \* deems necessary; and

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

286 \* \* \*

287 **SECTION 4.** This act shall take effect and be in force from  
288 and after its passage.

