

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 870

Introduced by Hansen, M., 26.

Read first time January 07, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Risk Management Program; to amend
2 sections 81-8,239.05 and 81-8,239.11, Reissue Revised Statutes of
3 Nebraska, and section 81-8,239.02, Revised Statutes Cumulative
4 Supplement, 2020; to provide for payment of attorney's fees from the
5 State Self-Insured Indemnification Fund and the State Self-Insured
6 Liability Fund; to change provisions relating to notifying the Risk
7 Manager of insufficient funds; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-8,239.02, Revised Statutes Cumulative
2 Supplement, 2020, is amended to read:

3 81-8,239.02 The following separate permanent revolving funds are
4 established in the state treasury for use under the Risk Management
5 Program according to the purposes for which each fund is established:

6 (1) The State Insurance Fund is hereby created for the purpose of
7 purchasing insurance to cover property, fidelity, and liability risks of
8 the state and workers' compensation claims against the state and other
9 risks to which the state or its agencies, officials, or employees are
10 exposed and for paying related expenses, including the costs of
11 administering the Risk Management Program. The fund may receive deposits
12 from assessments against state agencies to provide insurance coverage as
13 directed by the Risk Manager. The Risk Manager may retain in the fund
14 sufficient money to pay for any deductibles, self-insured retentions, or
15 copayments as may be required by such insurance policies and Risk
16 Management Program expenses;

17 (2) The State Self-Insured Property Fund is hereby created for the
18 purpose of replacing, repairing, or rebuilding state property which has
19 incurred damage or is suffering other loss not fully covered by insurance
20 and for paying related expenses. The fund may receive deposits from
21 assessments against state agencies to provide property coverage as
22 directed by the Risk Manager. The Risk Manager may assess state agencies
23 to provide self-insured property coverage;

24 (3) The State Self-Insured Indemnification Fund is hereby created
25 for the purpose of paying indemnification claims under section
26 81-8,239.05. Indemnification claims shall include payments for awards,
27 settlements, and associated costs, including appeal bonds and reasonable
28 costs and attorney's fees associated with a required appearance by agency
29 legal counsel or other legal counsel hired to represent the agency,
30 official, or employee before any tribunal. The fund may receive deposits
31 from assessments against state agencies to pay for the costs associated

1 with providing and supporting indemnification claims. The creation of
2 this fund shall not be interpreted as expanding the liability exposure of
3 the state or its agencies, officials, or employees; and

4 (4)(a) {4} The State Self-Insured Liability Fund is hereby created
5 for the purpose of paying compensable liability and fidelity claims
6 against the state or its agencies, officials, or employees which are not
7 fully covered by insurance and for which there is insufficient agency
8 funding and for which a legislative appropriation is made under section
9 81-8,239.11.

10 (b) The fund may be used to pay claims against the state or its
11 agencies, officials, or employees for which there is a specific provision
12 of law for the resolution of such claims but which are not otherwise
13 payable from the State Insurance Fund, State Self-Insured Property Fund,
14 State Self-Insured Indemnification Fund, Workers' Compensation Claims
15 Revolving Fund, or Tort Claims Fund. Such claims shall include payments
16 for awards, settlements, and associated costs, including appeal bonds and
17 reasonable costs and attorney's fees associated with a required
18 appearance by agency legal counsel or other legal counsel hired to
19 represent the agency, official, or employee before any tribunal.

20 (c) A claim for reasonable costs and attorney's fees described in
21 subdivision (b) of this subsection shall be paid from the State Self-
22 Insured Liability Fund if such claim results from the inability of the
23 Attorney General to represent an agency, official, or employee due to a
24 conflict of interest.

25 (d) The creation of this fund shall not be interpreted as expanding
26 the liability exposure of the state or its agencies, officials, or
27 employees.

28 (e) The Risk Manager shall report electronically all claims and
29 judgments paid from the State Self-Insured Liability Fund to the Clerk of
30 the Legislature annually. The report shall include the name of the
31 claimant, the amount claimed and paid, and a brief description of the

1 claim, including any agency, program, and activity under which the claim
2 arose. Any member of the Legislature may receive an electronic copy of
3 the report by making a request to the Risk Manager.

4 Sec. 2. Section 81-8,239.05, Reissue Revised Statutes of Nebraska,
5 is amended to read:

6 81-8,239.05 (1) The State of Nebraska shall indemnify its officials
7 and employees and its past officials and employees for money damages and
8 reasonable costs incurred as a result of an act or omission occurring in
9 the course and scope of employment of such official or employee after May
10 22, 1981. Such official's or employee's right to indemnification shall
11 include the payments of awards, settlements, and associated costs,
12 including appeal bonds and reasonable costs and attorney's fees
13 associated with a required appearance by agency legal counsel or other
14 legal counsel hired to represent the agency, official, or employee before
15 any tribunal.

16 (2) Subsection (1) of this section shall not apply in case of
17 malfeasance in office or willful or wanton neglect of duty. This section
18 shall not be interpreted as an expansion of any state official's or
19 employee's personal liability.

20 (3) The Attorney General shall notify the Risk Manager when an
21 official or employee is being represented by the Attorney General or has
22 engaged competent counsel approved by the Attorney General. The
23 reasonable costs of litigation, including appeal bonds, or the reasonable
24 costs and attorney's fees of any appearance by agency legal counsel or
25 other legal counsel hired to represent the agency, official, or employee
26 before any tribunal shall be paid by the Risk Manager from the State
27 Self-Insured Indemnification Fund.

28 (4) The Attorney General shall file copies of all awards and
29 settlements and any final court approval with the Risk Manager and shall
30 request that the Risk Manager make the required payments, if funds are
31 available, from the State Self-Insured Indemnification Fund, except that

1 any portion of an award or settlement which is for punitive damages may
2 only be paid with the approval of the Legislature. The official or
3 employee may file a claim under the State Miscellaneous Claims Act if
4 payment is not made.

5 (5) The Risk Manager shall report electronically all claims and
6 judgments paid from the State Self-Insured Indemnification Fund to the
7 Clerk of the Legislature annually. The report shall include the name of
8 the claimant, the amount claimed and paid, and a brief description of the
9 claim, including any agency, program, and activity under which the claim
10 arose. Any member of the Legislature may receive an electronic copy of
11 the report by making a request to the Risk Manager.

12 Sec. 3. Section 81-8,239.11, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 81-8,239.11 A state agency head shall file copies of all
15 settlements, and a state agency head or the Attorney General shall file
16 copies of all final, nonappealable judgments, of all self-insured
17 liability claims with the Risk Manager. If the state agency has
18 insufficient funds to pay the settlement or judgment, the state agency
19 shall notify and provide documentation of such insufficient funds to the
20 Risk Manager. The Risk Manager shall then submit the settlement or
21 judgment to the Legislature in the same manner as provided in the State
22 Miscellaneous Claims Act. The Legislature shall review the settlement or
23 judgment and make an appropriation if appropriate.

24 Sec. 4. Original sections 81-8,239.05 and 81-8,239.11, Reissue
25 Revised Statutes of Nebraska, and section 81-8,239.02, Revised Statutes
26 Cumulative Supplement, 2020, are repealed.