

FIRST REGULAR SESSION

HOUSE BILL NO. 546

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RICHEY.

1399H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 537, RSMo, by adding thereto seven new sections relating to the Missouri public school teacher risk management fund, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto seven new sections, to be known as sections 537.801, 537.806, 537.811, 537.816, 537.821, 537.826, and 537.831, to read as follows:

537.801. 1. There is hereby created the "Missouri Public School Teacher Risk Management Fund", which shall be a body corporate and politic. The board of such fund shall have the powers and duties specified in sections 537.801 to 537.831 and such other powers as may be necessary or proper to enable the board and the board's officers, employees, and agents to carry out fully and effectively all the purposes of sections 537.801 to 537.831.

2. As used in sections 537.801 to 537.831, the following words mean:

(1) "Board", the board of trustees of the Missouri public school teacher risk management fund;

(2) "Fund", the Missouri public school teacher risk management fund established by subsection 1 of this section;

(3) "Participating teacher", a teacher who currently participates in the fund by making annual contributions as provided in sections 537.801 to 537.831 and had not withdrawn from participation in the fund at the time of the conduct for which a payment of a claim from the fund is sought;

(4) "Teacher", the same meaning as in section 163.011.

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **3. Any teacher may participate in the Missouri public school teacher risk**
18 **management fund and use public funds to pay any assessment made in conjunction with**
19 **the fund.**

537.806. 1. All teachers in Missouri shall have the option of participating in the
2 **fund and making annual contributions to the fund in the amount determined by the**
3 **board in accordance with the provisions of section 379.470 relating to rates established**
4 **by insurers. Participation in the fund has the same effect as purchase of insurance by a**
5 **teacher, as otherwise provided by law, and shall have the same effect as a self-insurance**
6 **plan adopted by the governing body of any political subdivision of the state. Moneys in**
7 **the fund shall be available for:**

8 **(1) The payment and settlement of all claims for which coverage has been**
9 **obtained by any participating teacher in accordance with coverages offered by the**
10 **board;**

11 **(2) The payment and settlement of tort claims against any participating teacher**
12 **for which coverage has been obtained in accordance with coverages offered by the**
13 **board when the claim is upon conduct of such participating teacher arising out of and**
14 **performed in connection with such participating teacher's official duties and occurring**
15 **when such teacher was participating in the fund; and**

16 **(3) Attorney's fees and expenses incurred in the settlement and defense of such**
17 **participating teachers for claims specified in this subsection.**

18 **2. No amount in excess of the amount specified by subsections 6 and 7 of section**
19 **537.826 shall be paid from the fund for the payment and settlement of claims arising out**
20 **of any single occurrence.**

21 **3. The board shall negotiate the settlement of and provide the defense of any**
22 **claim for which coverage has been obtained by any participating teacher in accordance**
23 **with coverages offered by the board. The board shall make the final determination on**
24 **the settlement of any claim or any portion of any claim that requires payment from the**
25 **fund. For any year in which a participating teacher does not make a yearly contribution**
26 **to the fund, the board of the fund shall not be responsible, in any way, for negotiating**
27 **the settlement of any claim arising from an occurrence in that year, providing any**
28 **defense of any claim arising from an occurrence in that year, making any payment on**
29 **any claim arising from an occurrence in that year, or making any payment on any**
30 **judgment on any claim arising from an occurrence in that year. Any teacher who**
31 **discontinues participation in the fund shall not resume participation for a period of**
32 **three years from the date such teacher discontinues participation.**

33 **4. All staff for the Missouri public school teacher risk management fund shall be**
34 **provided by the office of administration except as otherwise specifically determined by**

35 the board. The fund shall reimburse the office of administration for all costs of
36 providing staff required by this subsection. Such reimbursement shall be made on an
37 annual basis under contract negotiated between the fund and the office of
38 administration. The state of Missouri shall not be liable in any way with respect to
39 claims made against the fund or against participating teachers covered by the fund, nor
40 with respect to any expense of operation of the fund. Moneys in the fund are neither
41 state moneys nor moneys collected or received by the state.

42 5. Each participating teacher shall notify the board within seven working days of
43 the time notice is received that a claim from an occurrence has been made against such
44 participating teacher. Such participating teacher shall supply information to the board
45 concerning any claim upon request. Such participating teacher shall also notify the
46 board upon the closing of any claim.

47 6. The board may contract with independent insurance agents, authorizing such
48 agents to accept contributions to the fund from participating teachers on behalf of the
49 board upon such terms and conditions as the board deems necessary and may provide a
50 reasonable method of compensating such agents. Such compensation shall not be
51 additional to the contribution to the fund.

 537.811. 1. There is hereby established a board of trustees of the Missouri public
2 school teacher risk management fund, which shall consist of the attorney general, the
3 commissioner of administration, and four members appointed by the governor with the
4 advice and consent of the senate. No more than two members appointed by the
5 governor shall be of the same political party. The members appointed by the governor
6 shall serve four-year terms, except that the original appointees shall be appointed for
7 the following terms: One for one year, one for two years, one for three years, and one
8 for four years. Any vacancies occurring on the board shall be filled in the same manner.

9 2. No trustee shall be liable personally in any way with respect to claims made
10 against the fund or against participating teachers covered by the fund.

11 3. The board shall elect a member of the board as chair. The chair shall preside
12 over meetings of the board and perform such other duties as shall be required by action
13 of the board.

14 4. The chair shall appoint another board member as vice chair, and the vice
15 chair shall perform the duties of the chair in the absence of the chair or upon the chair's
16 inability or refusal to act.

17 5. The board shall appoint a secretary, who shall have charge of the offices and
18 records of the fund, subject to the direction of the board.

19 **6. Any summons or writ issued by the courts of the state shall be served upon the**
20 **chair or, in the chair's absence, on the vice chair or upon a registered agent that the**
21 **board shall designate.**

537.816. 1. The board shall meet in Jefferson City, Missouri, upon the written
2 **call of the chair or by the agreement of any three members of the board. Notice of the**
3 **meeting shall be delivered to all other trustees in person or by depositing notice in a**
4 **United States post office in a properly stamped and addressed envelope not less than six**
5 **days prior to the date fixed for the meeting. The board may meet at any time by**
6 **unanimous mutual consent. There shall be at least one meeting in each quarter.**

7 **2. Four trustees shall constitute a quorum for the transaction of business, and**
8 **any official action of the board shall be based on a majority vote of the trustees present.**

9 **3. The trustees shall serve without compensation but shall receive**
10 **reimbursement from the fund for actual and necessary expenses incurred in the**
11 **performance of duties for the board.**

12 **4. Duties performed for the fund by any member of the board who is a**
13 **participating teacher shall be considered duties in connection with the regular**
14 **employment of such member, and such member shall suffer no loss in regular**
15 **compensation by reason of the performance of such duties.**

16 **5. The board shall keep a complete record of all board proceedings.**

17 **6. A statement covering the operations of the fund for the year, including income**
18 **and disbursements, and of the financial condition of the fund at the end of the year,**
19 **showing the valuation and appraisal of such fund's assets and liabilities, as of July first,**
20 **shall each year be delivered to the governor and be made readily available to public**
21 **entities.**

22 **7. The principal office of the fund shall be in Jefferson City, Missouri. The fund**
23 **shall have a seal inscribed "Missouri Public School Teacher Risk Management Fund",**
24 **which shall be in the custody of such fund's secretary. The courts of this state shall take**
25 **judicial notice of the seal. All copies of records, books, and written instruments that are**
26 **kept in the office of the fund and are certified by the secretary under the seal shall be**
27 **proved or admitted in any court or proceeding as provided in section 109.130.**

28 **8. The general administration of and responsibility for the proper operation of**
29 **the fund including, but not limited to, all decisions relating to payments from the fund,**
30 **are hereby vested in the board.**

31 **9. The board shall determine and prescribe all rules, regulations, coverages to be**
32 **offered, forms, and rates to carry out the purposes of sections 537.801 to 537.831.**

33 **10. The board shall have the power to subpoena witnesses or obtain the**
34 **production of records when necessary for the performance of the board's duties.**

35 **11. Subject to the provisions of the constitution and sections 537.801 to 537.831,**
36 **the board shall have exclusive jurisdiction and control over the funds and property of**
37 **the fund.**

38 **12. No trustee or staff member of the fund shall receive any gain or profit from**
39 **any moneys or transactions of the fund.**

40 **13. Any trustee or staff member accepting any gratuity or compensation for the**
41 **purpose of influencing such individual's action with respect to the investment of the**
42 **funds of the system or in the operations of the fund shall forfeit such individual's office**
43 **and in addition shall be subject to the penalties prescribed in section 576.020.**

44 **14. The board shall have the authority to use moneys from the fund to purchase**
45 **one or more policies of insurance or reinsurance to cover the liabilities of participating**
46 **teachers who are covered by the fund.**

47 **15. If such insurance can be procured, the board shall have the authority to**
48 **procure insurance covering participating teachers for amounts in excess of the amount**
49 **specified by subsections 6 and 7 of section 537.826 per occurrence for liabilities covered**
50 **by the fund. The costs of such insurance shall be considered in determining the**
51 **contribution of each participating teacher.**

52 **16. The board shall have the authority to use moneys from the fund to assist**
53 **participating teachers in assessing and reducing the risk of liabilities that may be**
54 **covered by the fund.**

537.821. 1. The board shall set up and maintain a Missouri public school teacher
2 **risk management fund account, into which shall be placed all contributions, premiums,**
3 **and income from all sources. All property, moneys, funds, investments, and rights that**
4 **belong to or are available for expenditure or use by the fund shall be dedicated to and**
5 **held in trust for the purposes set out in sections 537.801 to 537.831 and no other. The**
6 **board shall have power, in the name of and on behalf of the fund, to purchase, acquire,**
7 **hold, invest, lend, lease, sell, assign, transfer, and dispose of all property, rights, and**
8 **securities and enter into written contracts, all as may be necessary or proper to carry**
9 **out the purposes of sections 537.801 to 537.831.**

10 **2. All moneys received by or belonging to the fund shall be paid to the secretary**
11 **and deposited by the secretary to the credit of the fund in one or more banks or trust**
12 **companies. No such moneys shall be deposited in or be retained by any bank and trust**
13 **company that does not have on deposit with the board at the time the kind and value of**
14 **collateral required by section 30.270 for depositories of the state treasurer. The**
15 **secretary shall be responsible for all moneys, securities, and property belonging to the**
16 **fund and shall give such corporate surety bond for the faithful handling of the same as**
17 **the board shall require.**

18 **3. So far as practicable, the moneys and property of the fund shall be kept safely**
19 **invested so as to earn a reasonable return. The board may invest the moneys of the fund**
20 **as permitted by the laws of Missouri relating to the investment of the capital, reserve,**
21 **and surplus funds of casualty insurance companies organized under the laws of**
22 **Missouri.**

23 **4. If contributions to the fund do not produce sufficient moneys to pay any**
24 **claims that may be due, the board shall assess, and each participating teacher including,**
25 **but not limited to, any teacher who has withdrawn but was a participating teacher in the**
26 **year in which the assessment is required shall pay, such additional amounts that are**
27 **each participating teacher's proportionate share of total claims allowed and due. The**
28 **board may abate or defer any part of the additional assessment of a participating**
29 **teacher if, in the opinion of the board, payment of the additional assessment would**
30 **create a financial hardship for such participating teacher. The provisions of this**
31 **subsection shall apply retroactively to the creation of the Missouri public school teacher**
32 **risk management fund.**

33 **5. To carry out the purposes for which the fund is established, the board may**
34 **select and employ, or contract with, persons experienced in insurance underwriting,**
35 **accounting, the servicing of claims, and ratemaking, who shall serve at the board's**
36 **pleasure, as technical advisors in establishing the annual contribution or may call upon**
37 **the director of the department of commerce and insurance for such services.**

537.826. 1. If the fund will be exhausted by the payment of all judgments and
2 **claims allowed during a particular fiscal year, amounts paid to each claimant or person**
3 **obtaining a judgment shall be prorated, with each person receiving an amount equal to**
4 **the percentage such person's own payment bears to the total of claims and judgments**
5 **outstanding and payable from the fund. Any amounts due and unpaid as a result of**
6 **such proration shall be paid in the following fiscal year.**

7 **2. If, at the end of any fiscal year, the fund has a balance exceeding projected**
8 **needs, and adequate reserves, the board may in its discretion refund on a pro rata basis**
9 **to all participating teachers an amount based on the contributions of each such**
10 **participating teacher for the immediately preceding year.**

11 **3. Except as provided in subsection 5 of this section, moneys in the Missouri**
12 **public school teacher risk management fund shall not be available to pay the following:**

13 **(1) Claims made under chapter 287;**

14 **(2) Fines or penalties threatened or imposed for violation of any civil or criminal**
15 **statute, administrative regulation, or county or municipal ordinance;**

16 **(3) Attorney's fees and expenses incurred in the defense of charges that criminal**
17 **statutes or county or municipal ordinances were violated;**

18 **(4) Claims against any participating teacher that were brought by or rendered in**
19 **favor of any participating teacher acting in an official capacity; or**

20 **(5) Claims against participating teachers who fail to cooperate with the**
21 **individuals or entities conducting any investigation and preparing any defense as**
22 **required by section 537.831.**

23 **4. No payment shall be made from the fund or any policy of insurance procured**
24 **by the fund unless and until the benefits provided to pay the claim by any other policy of**
25 **liability insurance have been exhausted.**

26 **5. The maximum amount that may be paid from the fund for the payment and**
27 **settlement of claims arising out of any single occurrence is two million dollars.**

28 **6. The limitation on awards for liability provided for in subsection 5 of this**
29 **section shall be increased or decreased on an annual basis effective January first of each**
30 **year in accordance with the Implicit Price Deflator for Personal Consumption**
31 **Expenditures as published by the Bureau of Economic Analysis of the United States**
32 **Department of Commerce. The current value of the limitation shall be calculated by the**
33 **director of the department of commerce and insurance, who shall furnish that value to**
34 **the secretary of state, who shall publish such value in the Missouri Register as soon after**
35 **each January first as practicable, but it shall otherwise be exempt from the provisions of**
36 **section 536.021.**

537.831. 1. Nothing in sections 537.801 to 537.831, shall be construed to broaden
2 **or restrict the liability of participating teachers beyond the provisions of sections**
3 **537.600 to 537.610, nor to abolish or waive any defense at law that might otherwise be**
4 **available to any participating teacher.**

5 **2. All teachers protected by the fund shall cooperate with individuals or entities**
6 **responsible for conducting any investigation and preparing any defense under the**
7 **provisions of sections 537.801 to 537.831 by assisting such individuals or entities in all**
8 **respects including, but not limited to, the making of settlements, the securing and giving**
9 **of evidence, and the attending and obtaining witnesses to attend hearings and trials.**

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