

12103548D

HOUSE BILL NO. 764

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 2.2-1837 of the Code of Virginia, relating to Division of Risk Management; risk management plans for public liability; indemnification agreements for public institutions of higher education.

Patrons—Peace and Cox, J.A.

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-1837 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-1837. Risk management plan for public liability.

A. Subject to the approval of the Governor, the Division shall establish a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide:

1. Protection against liability imposed by law for damages resulting from any claim:

a. Made against any state department, agency, institution, board, commission, officer, agent, or employee for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization;

b. Made against participants, other than professional counsel, in student disciplinary proceedings at public institutions of higher education for nonmalicious acts or omissions of any nature in the course and scope of participation in the proceedings; or

c. Resulting from an authorized indemnification agreement entered into by a Virginia public institution of higher education, which agreements the institutions in accordance with this subsection.

A Virginia public institution of higher education may execute an indemnification agreement if the Governor (i) considers in advance of execution (a) the institution's analysis of the relevant public benefit and risk of liability, (b) the Division's charge to be assessed against the institution for providing insurance or self-insurance coverage for the claims resulting from the indemnification agreement, and (c) the Office of the Attorney General's comments; and (ii) determines that execution is necessary to further the public's best interests.

The indemnification agreement shall limit the institution's total liability to a stated dollar amount and shall notify the contractor that the full faith and credit of the Commonwealth are not pledged or committed to payment of the institution's obligation under the agreement. However, no such institution shall be authorized to enter into an indemnification agreement to indemnify any person or entity against damages arising from a sponsored project conducted by such institution. For the purposes of this section, a "sponsored project" is a research, instruction, or service project supported by an entity external to a Virginia public institution of higher education pursuant to a grant, cooperative agreement, or other contract;

2. Protection against tort liability and incidental medical payments arising out of the ownership, maintenance or use of buildings, grounds or properties owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment;

3. For the payment of attorneys' attorney fees and expenses incurred in defending such persons and entities concerning any claim that (i) arises from their governmental employment or authorization, that (ii) arises from their participation in such student disciplinary proceedings, or (iii) is described in any such indemnification agreement, where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason; and

4. For the payment of attorney's attorney fees and expenses awarded to any individual or entity against the Commonwealth, or any department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity, or in reliance upon any constitutional provision, or law of the Commonwealth. It is the obligation of the Division to provide for such indemnification regardless of whether there is a request for or an award of damages associated with the award of such fees and expenses.

a. As a condition of coverage for the payment of attorney's attorney fees and expenses, the department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth shall (i) promptly notify the Division of the commencement of any claim, suit, action or other proceeding prior to its settlement, (ii) provide the Division with full nonprivileged information on the

INTRODUCED

HB764

59 matter as requested, and (iii) permit the Division to participate in the investigation of such claim, suit,  
60 action or other proceeding. Failure to promptly notify the Division or to reasonably cooperate may, at  
61 the Division's discretion, result in no payment or a reduced payment being made.

62 b. The Division shall set the premium and administrative costs to be paid to it for providing payment  
63 of attorney fees and expenses awarded pursuant to this section. The premiums and administrative costs  
64 set by the Division shall be payable in the amounts, at the time and in the manner that the Division in  
65 its sole discretion requires. Premiums and administrative costs shall be set to best ensure the financial  
66 stability of the plan.

67 B. Any risk management plan established pursuant to this section shall provide for the establishment  
68 of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims  
69 covered under the plan. The funds shall be invested as provided in § 2.2-1806 and interest shall be  
70 added to the fund as earned. The trust fund shall also provide for payment of administrative costs,  
71 contractual costs, and other expenses related to the administration of such plan.

72 C. The risk management plan for public liability shall be submitted to the Governor for approval  
73 prior to implementation.

74 D. The risk management plan established pursuant to this section shall provide protection against  
75 professional liability imposed by law as provided in § 24.2-121, resulting from any claim made against a  
76 local electoral board, any of its members, any general registrar, or any employee of or paid assistant to a  
77 registrar for acts or omissions of any nature while acting in an authorized governmental or proprietary  
78 capacity and in the course and scope of employment or authorization, regardless of whether or not the  
79 civil action requests monetary damages, subject to the limitations of the risk management plan.

80 E. The risk management plan established pursuant to this section shall provide protection against any  
81 claim made against any soil and water conservation district, director, officer, agent or employee thereof,  
82 (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or  
83 maintained by any such district or used by district employees or other authorized persons in the course  
84 of their employment; or (ii) arising out of acts or omissions of any nature while acting in an authorized  
85 governmental or proprietary capacity and in the course and scope of employment or authorization.

86 F. The risk management plan established pursuant to this section shall provide protection against  
87 professional liability imposed by law for damages resulting from any claim made against a local school  
88 board selection commission or local school board selection commission members for acts or omissions  
89 of any nature while acting in an authorized governmental or proprietary capacity and in the course and  
90 scope of authorization, subject to the limitations of the risk management plan.

91 G. The risk management plan established pursuant to this section shall provide coverage for any  
92 matter that involves or could involve an action or proceeding against a judge, the nature of which is  
93 designed to determine whether discipline or other sanction of the judge for malfeasance or misfeasance  
94 is appropriate or to otherwise determine the fitness of the judge to hold office or to continue his  
95 employment. No coverage or indemnification shall be made pursuant to this subsection when the  
96 Supreme Court of Virginia finds that the judge should be censured or removed from office pursuant to  
97 Section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.

98 H. The risk management plan established pursuant to this section shall provide protection against  
99 claims made against chaplains by persons incarcerated in a state correctional facility, a juvenile  
100 correctional center, or a facility operated pursuant to the Corrections Private Management Act  
101 (§ 53.1-261 et seq.) arising out of services provided by the chaplains to such incarcerated persons,  
102 regardless of whether such services were provided on a volunteer basis or for compensation. For the  
103 purposes of this subsection, chaplains shall include only those persons, who, at the time any claim may  
104 arise, were acting pursuant to, and in compliance with, an agreement between the chaplain or an  
105 organization to which the chaplain belongs, and the Department of Corrections, the Department of  
106 Juvenile Justice, or an operator of a facility operated pursuant to the Corrections Private Management  
107 Act.