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## STATE GOVERNMENT

### *State Authorities: Permit the Establishment of Programs of Self-Insurance*

CODE SECTION: O.C.G.A. § 50-5-16 (new)  
BILL NUMBER: HB 662  
ACT NUMBER: 123  
SUMMARY: The Act provides for the establishment of a program of insurance and self-insurance liability coverage for state authorities to be administered by the Department of Administrative Services.  
EFFECTIVE DATE: March 5, 1987

#### *History*

Amid a background of concern over rising costs and decreasing availability of insurance both nationally<sup>1</sup> and in Georgia,<sup>2</sup> fear that state authorities would be unable to purchase or renew coverage, and specific instances of difficulty in finding liability coverage,<sup>3</sup> the General Assembly passed HB 662.<sup>4</sup> The bill was supported by the Governor's office and establishes a program similar to one already created by executive order to provide for self-insurance of state authorities.<sup>5</sup>

HB 662 met with no significant resistance in the House or Senate. Those representing the interests of the insurance industry, who might have opposed a self-insurance program, did not challenge the bill. In part, this lack of opposition was the result of the unpopularity in the industry of underwriting public agencies and municipalities. Because such insur-

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1. *Businesses Struggling to Adapt as Insurance Crisis Spreads*, Wall St. J., Jan. 21, 1986, at 31A, col. 1.

2. *Insurance a Huge Crisis for Little Firms*, Atlanta Const., May 9, 1986, at 1A, col. 2.

3. *Insurance About to Sidetrack Steam Engine*, Atlanta Const., May 1, 1986, at 27A, col. 2 (difficulty of obtaining insurance for state authority-run steam engine).

4. A similar exigency arising out of the scarcity and expense of insurance in the current market led to the passage of HB 246, which amended parts of Chapter 85 of Title 36 of the Code to permit the formation of "interlocal risk management agencies" by municipalities and counties which might pool resources to create self-insurance funds to cover liability and property damage risks. O.C.G.A. §§ 36-85-1, -5, -18, -20 (1987).

5. Telephone interview with Russell N. Sewell, Governor's General Counsel (Apr. 13, 1987) [hereinafter Sewell Interview].

ance contracts are rebid annually, a company providing such insurance runs the risk of sustaining substantial losses without being able to recover them during successive renewals.<sup>6</sup>

The bill was quickly signed into law on March 5, 1987 to prevent possible lapses of coverage.<sup>7</sup> The program is to be operated by the Department of Administrative Services which has managed a similar program of liability insurance and self-insurance for employees and public officers of the state since 1978.<sup>8</sup>

### HB 662

The Act adds O.C.G.A. § 50-5-16 to the general provisions of the Code defining the powers of the Department of Administrative Services. The new section authorizes the Commissioner of the Department of Administrative Services to establish a liability insurance and self-insurance program for state authorities.<sup>9</sup> Specifically, it empowers the Commissioner to administer the program, hire consultants, establish reserves, and purchase commercial policies as he or she finds necessary or useful. The Commissioner is given discretion to determine, identify, and provide coverage for any "unique exposures" of particular authorities.<sup>10</sup> In addition, existing insurance programs of state authorities may be replaced by the new programs that the Commissioner may establish.

In defining the scope of state authorities' insurance coverage, the Act specifically states that the state insurance program does not constitute a waiver of any defense, privilege, sovereign immunity, or other immunity which a state authority may assert.<sup>11</sup> Although state authorities can generally sue and be sued,<sup>12</sup> they may sometimes be considered to be performing a discretionary ministerial governmental function which allows the defense of sovereign immunity.<sup>13</sup> The credit of the state is not pledged by the provisions of the Act.<sup>14</sup> Liability is limited to amounts set by the Commissioner, and other state or authority funds remain free from claims.<sup>15</sup> The statute also forbids one state authority from asserting liability claims against another.<sup>16</sup>

*M. Ramey*

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6. Telephone interview with Robert I. Marcus, C.I.C., Georgia Association of Professional Insurance Agents (Apr. 14, 1987).

7. Sewell Interview, *supra* note 5.

8. O.C.G.A. § 45-9-4 (Supp. 1987).

9. O.C.G.A. § 50-5-16(b) (Supp. 1987).

10. O.C.G.A. § 50-5-16(c) (Supp. 1987).

11. O.C.G.A. § 50-5-16(e) (Supp. 1987).

12. Knowles v. Housing Auth. of Columbus, 212 Ga. 729, 95 S.E.2d 659 (1956).

13. Azizi v. Board of Regents of Univ. Sys., 132 Ga. App. 384, 208 S.E.2d 153 (1974).

14. O.C.G.A. § 50-5-16(f) (Supp. 1987).

15. *Id.*

16. O.C.G.A. § 50-5-16(g) (Supp. 1987).