



**AGENCY:** General Services Department, New Mexico Public School Insurance Authority, Albuquerque Public Schools

**DATE:** August 25, 2016

**PURPOSE OF HEARING:** Review of publicly-funded risk management programs

**WITNESS:** AJ Forte, Director, Risk Management Division, GSD, Sammy Quintana, Director, NMPSIA, Scott Elder, interim Chief Operations Officer, APS

**PREPARED BY:** Anne Hanika-Ortiz, Principal Analyst, LFC

**EXPECTED OUTCOME:** Informational

In addition to the General Services Department (GSD), New Mexico Public School Insurance Authority (NMPSIA) and Albuquerque Public Schools (APS), various other governmental entities provide insurance coverage on behalf of cities, counties, and municipalities. Most have workers' compensation to cover occupational injuries and nearly all similar exposures for property and liability losses. Each has a different funding mechanism to protect against the risk of loss as a result of these exposures.

## BACKGROUND INFORMATION

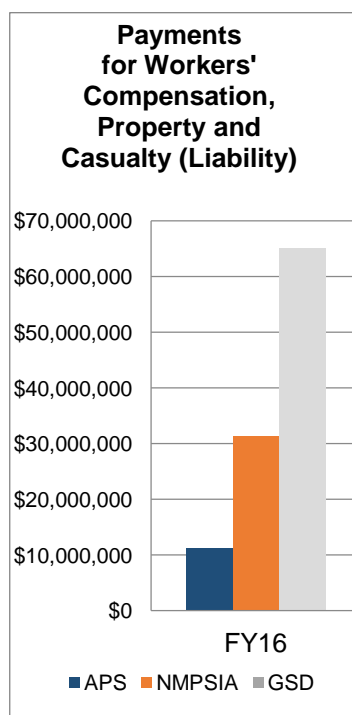
GSD, NMPSIA and APS administer self-insurance plans for property, liability and workers' compensation exposure on behalf of public schools, state agencies and local public bodies. For FY16, spending was \$175 million with 60 percent for claims and the other 40 percent for administrative expenses, excess coverage, and loss control services.

## Creating Effective Risk Management Programs

**Risk Management Division.** The Risk Management Advisory Board (Section 15-7-4/5) is comprised of the Attorney General, Superintendent of Insurance, secretary of the Department of Finance and Administration, and director of the Legislative Council Service, among others, and is tasked with reviewing insurance policies, professional services contracts, rules, and all certificates of coverage issued by RMD. The statute does not specify how often the board meets; but, it is clear what falls within the review of the board. The committee has not met since June of 2015.

RMD sets rates to reflect an agency's five year loss history and exposure to losses with regards to a particular line of coverage. Each spring, RMD sends out an exposure survey for agencies to complete. Data is collected on payroll, equipment, FTE's, hospital beds, buildings, contents, etc. In the past, not all agencies provided the most up-to-date information which had resulted in inaccurate premiums over time. Surveys are important because excess coverage insurers may limit coverage for undocumented exposures. More recently, the program reports it is seeing more accurate reporting.

RMD self-insures liability losses up to \$5 million and property losses up to \$500 thousand and buys a thin layer of excess coverage for losses above those amounts. Last year, the program paid \$5.5 million in excess premiums. For workers' compensation, the program self-insures all losses.



## RMD's Risk Program Appropriations

(in thousands)

FY12	FY17	FY18 Proposed	Change FY17-FY18
\$64,449	\$77,330	\$68,445	-12%

Between FY12 and FY17, appropriations to the GSD's risk funds increased 20 percent to cover an upward trend in tort claims and improve solvency.

## Payments from GSD Risk Funds

(in thousands)

Coverage	FY12	FY15	FY16 Projected	Change
Workers' Comp	\$17,423	\$15,597	\$15,292	-12%
Property & Liability	\$23,312	\$35,984	\$49,770	113%
<b>Total</b>	<b>\$40,735</b>	<b>\$51,581</b>	<b>\$65,062</b>	<b>60%</b>

Source: GSD and LFC files

Overall, projected payments from the public liability fund for losses in FY16 were \$44 million, 50 percent higher than FY15; however, losses in FY17 are expected to decline 20 percent as are funding reserve requirements for medical professional, law enforcement and general liability. For property, fund balances are high which suggests weather-related losses are down. For workers' compensation, claim numbers have fallen in recent years but the cost per claim has increased due to inflation.

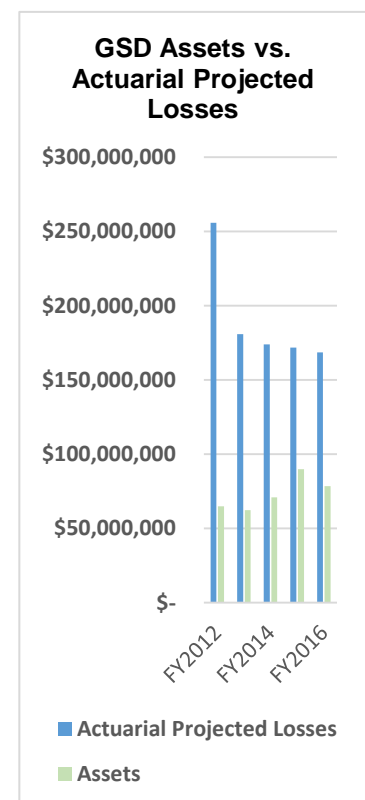
**Rates for FY18.** This summer, RMD published premium rates for agencies for FY18 that reflect a 12 percent decrease in the overall premium. The program credits improved loss control and decreases in property excess coverage premiums although a smaller workforce may also be contributing. The rates will achieve nearly \$9 million in savings across the pool compared to FY17 rates. This was accomplished by excluding certain premium development factors in past calculations that improved fund solvency. As usual, rates will be allocated across the risk pool based on claims and exposure changes so some agencies may still see increases.

Over the past year, NMPSIA and GSD have been in disagreement over an opinion issued by the Attorney General that higher educational institutions may purchase insurance from either program. Higher educational institutions currently purchase insurance from RMD but two have expressed interest in exploring if NMPSIA can lower their premiums. RMD disagreed with the AG's opinion and held up the change; about one-third of entities in RMD's pool are higher educational institutions. How this will play out and influence costs for the two pools remains to be seen.

**Public School Insurance Authority.** Section 22-29-2 NMSA 1978 creates the Public School Insurance Authority Act to provide for comprehensive core insurance programs to maximize cost containment opportunities for public schools. Section 22-29-4 creates the "public school insurance authority" to provide for group health and risk coverage and due process reimbursement with the exception of coverage provided by RMD.

## GSD's Risk Management Advisory Board

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RMD reported last year that in the four years prior to the 2010 enactment of the Whistleblower Protection Act, the public liability fund paid on average \$7.6 million per year for defense and settlement of civil rights claims. In 2012, those costs jumped 50 percent to \$11.5 million.

## NMPSIA School Property Values

(in millions)

### GSD's excess coverage

\$15 million aggregate liability limit and \$550 million for property

Workers' Comp \$ 0  
Property \$ 605,000  
Liability \$ 3,584,000

### NMPSIA's excess coverage

\$20 million each occurrence per member for liability; \$750 million for property; and \$2 million for workers' compensation

Workers' Comp \$ 714,829  
Property \$ 22,290,807  
Liability \$ 12,413,309

FY11	FY12	FY13	FY14	FY15	5-Year Change
\$13,398,140	\$15,139,898	\$16,956,686	\$18,143,654	\$20,966,803	56%

Source: NMPSIA and LFC files

All K-12 school districts, except for APS, charter schools, students (including athletes), employees, volunteers, and school bus contractors are covered under policies administered by NMPSIA. NMPSIA's premium computation is a combination of changes in exposure, such as property values, number of students and employees, recent loss experience, and a school buildings proximity to services such as police and fire departments

The program self-insures liability losses up to \$1 million, property losses up to \$750 thousand, workers' compensation losses up to \$600 thousand, and purchases excess coverage for larger losses. Because NMPSIA chooses to retain much higher limits of coverage than GSD (see side bar) coupled with increases in exposure from new members; since FY12, excess coverage premiums have increased about 15 percent to over \$35 million.

## NMPSIA's Risk Program Appropriations

(in thousands)

FY12	FY17	FY18 Proposed	Change FY12-FY17
\$56,041	\$73,205	\$76,292	31%

Source: NMPSIA and LFC files

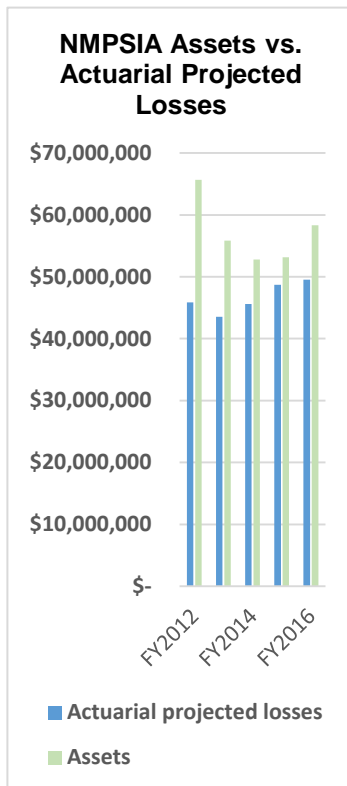
Since FY12, the Legislature increased appropriations to NMPSIA's risk program by \$17.2 million, over 30 percent, which accompanied a larger appropriation from the general fund for insurance in the state equalization guarantee appropriation to school districts. For FY16, NMPSIA increased premiums 11 percent which raised \$6.8 million to pay claims and improve fund solvency. About a dozen school districts and charter schools saw decreases in their premiums; however, most saw increases – some as high as 200 percent. For FY17, the agency increased rates again 5 percent.

## Payments from the NMPSIA Risk Fund

(in thousands)

Coverage	FY12	FY15	FY16	Change FY12-FY16
Workers' Comp	\$13,510	\$12,321	\$14,945	11%
Property & Liability	\$13,538	\$15,680	\$16,341	21%
<b>Total</b>	<b>\$27,048</b>	<b>\$28,001</b>	<b>\$31,286</b>	<b>16%</b>
Excess Coverage	\$31,305	\$35,120	\$35,994	15%

Source: NMPSIA and LFC files



For FY18, NMPSIA anticipates needing an increase of 4 percent, or \$3.1 million, from schools to cover a projected 6 percent increase for claims and 3 percent increase for excess coverage. Since it's unlikely funding from the general fund will be available for premium increases for risk insurance in these uncertain times -- school districts and charter schools with insufficient fund balances may be faced with reducing services to students.

**Albuquerque Public Schools.** APS is also self-insured for workers compensation, property and casualty exposure and carries excess coverage for larger claims, similar to NMPSIA's approach. Since 2012, the district's claims have been self-administered by APS staff but costs have risen. More recently, however, the district has issued a request-for-proposal to outsource claims and loss control services. After several challenging years, the district reports it is starting to see some claims trending more favorably.

**Impediments to favorably settling claims against schools.** Two issues impact NMPSIA settlement negotiations. First, the Inspection of Public Records Act includes an exception for claims until 180 days after all litigation is exhausted. However, plaintiffs' attorneys argue the exception only applies to RMD covered entities and some courts have supported that argument - when this law and exception were enacted, schools were under RMD. Second, school bus contractors are allowed to be covered by NMPSIA to take advantage of lower rates. However, when a claim is made involving a bus contractor there is no New Mexico Tort Cap protection because some plaintiff attorneys have successfully argued that school bus contractors are not public entities; therefore, the cap should not apply.

**Concussions.** Schools can anticipate K-12 litigation for concussion injuries in coming years because of NFL/NAA settlements. According to statistics, 33 percent of high school athletes (including cheerleaders) who have a concussion, report two or more the same year; 47 percent occur during football; and 90 percent do not involve a loss of consciousness. Schools have been encouraged to keep good records relating to immediate removal from activities after head trauma and being in compliance with educational protocols for coaches and return-to-play protocols for athletes.

#### **LFC STAFF SUGGESTIONS FOR NEXT STEPS:**

- Assist schools improve how new teachers and others are vetted
- Review loss runs and reevaluate excess coverage needs
- Deny claims for buildings and grounds not maintained
- Reconsider deductibles for schools that are "bad actors"
- Clarify the state Whistleblower Protection Act and other statutes that may be impeding the state's ability to settle claims fairly

#### **NMPSIA's Oversight Board**

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