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SENATE BILL 508

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

John M. Sapien

AN ACT

RELATING TO RISK MANAGEMENT; PROVIDING THAT CERTAIN RISKS OF STATE AGENCIES SHALL BE COVERED BY DIRECT APPROPRIATIONS TO THE PUBLIC LIABILITY FUND AND THE PUBLIC PROPERTY RESERVE FUND RATHER THAN BY ASSESSMENTS AGAINST EACH AGENCY IN THE BUDGETARY PROCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-5-1 NMSA 1978 (being Laws 1981, Chapter 101, Section 1, as amended) is amended to read:

"13-5-1. STATE AGENCY PUBLIC PROPERTY--INSURANCE--RESERVES FOR LOSSES OF STATE AGENCIES--PUBLIC PROPERTY RESERVE FUND CREATED.--

A. The risk management division of the general services department shall purchase a blanket insurance policy for public buildings of state agencies against loss or damage

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1 by fire, windstorm, hail, smoke, explosion, riot or civil  
2 commotion. The risk management division may provide coverage  
3 to covered educational entities under the public property  
4 reserve fund through blanket or individual policies. The risk  
5 management division shall create a reserve for the uninsured  
6 value of any such public building and for the uninsured loss or  
7 damage to any such building by flood, subject to any deductible  
8 that the risk management advisory board determines shall be  
9 borne by individual state agencies or covered educational  
10 entities.

11 B. Subject to any deductible to be borne by  
12 individual state agencies or covered educational entities, the  
13 risk management division of the general services department may  
14 purchase insurance, establish reserves or provide a combination  
15 of insurance and reserves to cover, in any amount not to exceed  
16 replacement cost:

17 (1) buildings of state agencies or covered  
18 educational entities destroyed or damaged by any peril other  
19 than a peril set forth in Subsection A of this section;

20 (2) personal property that is destroyed or  
21 damaged by any peril; or

22 (3) personal property that is stolen.

23 C. Any insurance purchased pursuant to Subsections  
24 A and B of this section may be purchased with such deductible  
25 provisions as may be deemed desirable by the risk management

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1 advisory board.

2 D. The director of the risk management division of  
3 the general services department shall include in [~~his~~] the  
4 director's annual report to the legislature an inventory of all  
5 public buildings insured by the division, the estimated total  
6 value of the buildings, the total insured value of the  
7 buildings and the amount of any deductible or maximum loss  
8 provisions in the current insurance policy covering the  
9 buildings.

10 E. There is created in the state treasury the  
11 "public property reserve fund". The fund shall consist of  
12 assessments of state agencies and covered educational entities  
13 deposited in the fund, money appropriated to the fund pursuant  
14 to Section 15-7-3.2 NMSA 1978, other appropriations made to the  
15 fund, income earned by the fund and money received as proceeds  
16 of insurance purchased pursuant to this section. The fund may  
17 be used to:

18 (1) purchase property insurance;  
19 (2) pay any claim covered by a certificate of  
20 coverage issued by the director of the risk management division  
21 of the general services department; provided such claims shall  
22 only be paid to the extent of actual expenses that have been or  
23 will be incurred to repair, reconstruct and replace covered  
24 property;

25 (3) pay the cost of repair, reconstruction and

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1 replacement of property and expense incidental thereto arising  
2 from damage or destruction covered pursuant to this section;

3 (4) enter into consulting and other contracts  
4 as may be necessary or desirable in carrying out the provisions  
5 of this section; and

6 (5) pay costs and expenses incurred in  
7 carrying out the provisions of this section.

8 F. The director of the legislative council service  
9 may elect to cover all or any part of public buildings or  
10 property under ~~[his]~~ the director's jurisdiction through the  
11 public property reserve fund by giving written notice of such  
12 election to the director of the risk management division of the  
13 general services department ~~[and paying assessments that the~~  
14 ~~director of the risk management division prescribes]~~. Upon  
15 notice by the director, pursuant to Section 15-7-3.2 NMSA 1978,  
16 coverage for the buildings and property shall be included by  
17 the risk management division in the budget request submitted by  
18 the general services department and the subsequent  
19 appropriation to the public property reserve fund.

20 G. For purposes of this section, "state agency"  
21 means the state or any of its branches, agencies, departments,  
22 boards, instrumentalities or institutions.

23 H. For the purposes of this section, "covered  
24 educational entities" means school districts as defined in  
25 Section 22-1-2 NMSA 1978 and educational institutions

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1 established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA  
2 1978 that request and are granted coverage from the risk  
3 management division of the general services department, if the  
4 coverage is commercially unavailable; except that coverage  
5 shall be provided to a school district only through the public  
6 school insurance authority or its successor unless the district  
7 has been granted a waiver by the authority or the authority is  
8 not offering the coverage for the fiscal year for which the  
9 division offers its coverage. A local school district to which  
10 the division may provide coverage may provide for marketing and  
11 servicing to be done by licensed insurance agents who shall  
12 receive reasonable compensation for their services."

13 SECTION 2. Section 15-7-2 NMSA 1978 (being Laws 1978,  
14 Chapter 166, Section 7, as amended) is amended to read:

15 "15-7-2. RISK MANAGEMENT DIVISION.--

16 A. There is established a "risk management  
17 division" of the general services department. The director of  
18 the risk management division shall be appointed by the  
19 secretary of general services. The director shall be  
20 knowledgeable and experienced in general insurance practices.  
21 The director shall be responsible for the acquisition and  
22 administration of all insurance purchased by the state. Except  
23 as provided by this section, no state agency may procure any  
24 kind of insurance other than through the risk management  
25 division.

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1                   B. Except as provided in Section 15-7-3.2 NMSA  
2 1978, the risk management division shall apportion to each  
3 state agency its contributions toward the purchase of insurance  
4 or for the providing of coverage for any risk not insured. The  
5 amount of contribution by each agency shall be determined by  
6 the risk management division and shall reflect the respective  
7 risks of each agency. All contributions toward the purchase of  
8 insurance or for the coverage of any risk not insured shall be  
9 paid into the public liability fund, the workers' compensation  
10 retention fund, the public property reserve fund or the group  
11 self-insurance fund, as appropriate. The department of finance  
12 and administration may collect or transfer funds from each  
13 agency to cover insurance or other costs, pursuant to the risk  
14 management division's instructions.

15                   C. The director, upon a finding that efficiency and  
16 economy so require, may authorize any state agency to purchase  
17 insurance for, or otherwise cover, vision, dental, any group or  
18 individual health, life, accidental death and dismemberment or  
19 disability coverage. Any authorization granted shall be  
20 conditioned upon the prior approval by the director of any  
21 policy to be purchased and the premium to be paid by the  
22 agency."

23                   **SECTION 3.** A new Section 15-7-3.2 NMSA 1978 is enacted to  
24 read:

25                   "15-7-3.2. [NEW MATERIAL] BUDGET REQUEST TO INCLUDE RISK  
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1 COVERAGES--APPROPRIATIONS.--

2 A. The risk management division shall not assess a  
3 state agency for risks covered by the public liability fund or  
4 the public property reserve fund. Each budget request  
5 submitted by the general services department for the risk  
6 management division shall include an estimate of the amount  
7 needed during the subsequent fiscal year from the general fund  
8 and other state funds to cover all state agencies for risks  
9 protected by expenditures from the public liability fund or the  
10 public property reserve fund, plus any amounts needed for  
11 reserves.

12 B. No budget shall be submitted by the governor  
13 pursuant to Section 6-3-21 NMSA 1978 and no budget  
14 recommendation shall be made by the legislative finance  
15 committee pursuant to Section 2-5-4 NMSA 1978 that does not  
16 contain an estimate of the amount needed during the subsequent  
17 fiscal year from the general fund and other state funds to  
18 cover all state agencies for risks protected by expenditures  
19 from the public liability fund or the public property reserve  
20 fund, plus any amounts needed for reserves.

21 C. The general appropriation act shall contain  
22 appropriations from the general fund and other state funds  
23 directly to the public liability fund and the public property  
24 reserve fund in amounts deemed to be sufficient by the  
25 legislature to cover all state agencies for risks protected by

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1 expenditures from those funds, plus any amounts needed for  
2 reserves."

3 SECTION 4. Section 41-4-20 NMSA 1978 (being Laws 1978,  
4 Chapter 166, Section 3, as amended) is amended to read:

5 "41-4-20. COVERAGE OF RISKS--INSURANCE.--

6 A. It [~~shall be~~] is the duty of governmental  
7 entities to cover every risk for which immunity has been waived  
8 under the provisions of the Tort Claims Act or any liability  
9 imposed under Section 41-4-4 NMSA 1978 as follows:

10 (1) local public bodies shall cover every such  
11 risk or liability as follows:

12 (a) for a risk for which immunity has  
13 been waived pursuant to Sections 41-4-9, 41-4-10 and 41-4-12  
14 NMSA 1978, the local public body shall cover the risk, and for  
15 any commercially uninsurable risk for which public liability  
16 fund coverage is made available, the local public body may  
17 insure the risk in accordance with the provisions of Section  
18 41-4-25 NMSA 1978;

19 (b) for excess liability for damages  
20 arising under and subject to the substantive law of a  
21 jurisdiction other than New Mexico, including but not limited  
22 to other states, territories and possessions and the United  
23 States [~~of America~~], the local public body shall provide  
24 coverage in accordance with the provisions of Subsection B of  
25 Section [~~41-4-27~~] 41-4-28 NMSA 1978, if coverage is available;

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1 and

2 (c) for a risk or liability not covered  
3 pursuant to Subparagraphs (a) and (b) of this paragraph, the  
4 local public body shall purchase insurance, establish reserves  
5 or provide a combination of insurance and reserves or provide  
6 insurance in any other manner authorized by law; and

7 (2) for state agencies, the risk management  
8 division shall insure or otherwise cover every such risk or  
9 liability in accordance with the provisions of Section 41-4-23  
10 NMSA 1978. Coverage shall include but is not limited to  
11 coverage for all such liability arising under and subject to  
12 the substantive law of a jurisdiction other than New Mexico,  
13 including but not limited to other states, territories and  
14 possessions and the United States [~~of America~~].

15 B. Other than state agencies with risks covered by  
16 appropriations pursuant to Section 15-7-3.2 NMSA 1978, the  
17 department of finance and administration shall not approve the  
18 budget of any governmental entity that has not budgeted an  
19 adequate amount of money to insure or otherwise cover pursuant  
20 to this section or Section 3-62-2 NMSA 1978 every risk of the  
21 governmental entity for which immunity has been waived under  
22 the provisions of the Tort Claims Act or liability imposed  
23 under Section 41-4-4 NMSA 1978. The public [~~school finance~~  
24 ~~division of the department of finance and administration~~]  
25 education department shall not approve the budget of any school

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1 district [~~which~~] that has failed to budget sufficient revenues  
2 to insure or otherwise cover pursuant to this section every  
3 risk for which immunity has been waived pursuant to the  
4 provisions of the Tort Claims Act or liability imposed under  
5 Section 41-4-4 NMSA 1978.

6 C. No liability insurance may be purchased by any  
7 governmental entity other than as authorized by the Tort Claims  
8 Act."

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