

<b>LFC Requester:</b>	<b>Simon</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: **Date** 2/1/2024  
**Original**     **Amendment**        **Bill No:** HB 287  
**Correction**     **Substitute**   

**Sponsor:** Rep. Dixon, Jaramillo, Matthews and Armstrong    **Agency Name and Code**    General Services Department - 350  
**Short Title:**    LEGAL SETTLEMENT AGREEMENT    **Person Writing**    Jose G. Puentes  
**Title:**    AGREEMENT    **Phone:**    \_\_\_\_\_    **Email**    Jose.Puentes@gsd.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB 287 would require state agencies that seek to enter an agreement to settle claims or litigation without the assistance of the Risk Management Division to publish any final settlement on the Sunshine Portal within thirty (30) days when such settlement is negotiated without the assistance of the Risk Management Division (“RMD”). The Bill would also require state agencies to notify RMD immediately upon becoming aware of an individual's death or serious injury or other substantial loss that is alleged or suspected to be caused at least in part by the actions of a state agency. Further, the Bill would require a state agency to appoint a loss prevention review team in consultation with the RMD Director. Finally, the Bill would require the RMD Director to submit a report to the legislature identifying the loss prevention reviews conducted in the last fiscal year, on or before October 1st. of each year.

**FISCAL IMPLICATIONS**

**SIGNIFICANT ISSUES**

**PERFORMANCE IMPLICATIONS**

Should HB 287 be enacted, implementing the bill would require additional funding because such teams would require staffing and according to Section 3 (C), would at times require “independent consultants.” The Bill does not specify if the state agencies would pay for such consultants or on what conditions, whether, or if RMD would pay for such consultants. Further the Bill requires that at least one member of the loss prevention review team have “expertise relevant to the matter;” and the expert is not to be or cannot be a person that was directly involved in the incident. This requirement will more than likely require subject matter experts in risk and loss control, which could be very costly, but at this time the scope of that risk is unknown. The review teams contemplated must be at least three persons -- but no more than half from the agency affected. Perhaps a five-person minimum would make for deeper review and more efficiency and balance. A loss prevention review member should not be a person already involved in other agency review, an agency counsel assigned to the matter, or an outside consultant already retained for other review at the agency.

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

\*There are significant legal liabilities to implementing HB 287 regarding the Liability Fund and the ability to defend state agencies in the litigation process. As the current Bill is proposed the loss prevention review reports would be subject to the Inspection Public Records Act and routine discovery requests. The reports could be utilized by potential litigants and actual litigants in a court proceeding; or to leverage settlements against a state agency or state agencies. Agency Members of the review team would also be subject to being deposed and could be compelled to testify against their own agency. The Bill as it is proposed will result in higher and more frequent payouts from the Liability Fund. Protection of the public's interest in the continued vitality and availability of the public liability fund and balancing its fiscal protection with proper review of risk, warrants closer review of this proposed bill.

## **ALTERNATIVES**

Language to consider would include that the loss prevention review reports be exempt from IPRA and barred from being used in any adversarial hearing to include but not limited to civil litigation, administrative hearings, arbitration proceedings. Language to consider and include might also bar any member of the loss prevention team from being deposed or being called to testify in any adversarial hearing to include but not limited to civil litigation, administrative hearings, arbitration proceedings. Language should be included that would bar the Director of RMD or any member of the Director's team from being deposed or being called to testify in any adversarial hearing to include but not limited to civil litigation, administrative hearings, arbitration proceedings.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**