

LFC Requester:	Micaela Fischer
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.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}

Date Prepared: 2/26/2025 *Check all that apply:*
Bill Number: SB 220/a Original Correction
 Amendment Substitute

Sponsor: <u>Sens. Pat Woods & Gabriel Ramos</u>	Agency Name and Code Number: <u>General Services Department - 350</u>
Short Title: <u>PUBLICATION OF LEGAL SETTLEMENT TERMS</u>	Person Writing: <u>Andrew Magida</u>
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0	Uknown	Unknown	Substantial	Recurring	Public liability fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 287
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 220 would require agencies to notify the director of the Risk Management Division (RMD) “immediately” when learning of a death, serious injury, or other substantial loss is alleged to be caused by that agency. Upon notification, the RMD director would then be mandated to appoint a loss prevention review team within thirty (30) days. The results of a loss prevention review investigation and the agency’s response to it would be public record. The bill would also require agencies who negotiate settlement agreements independent of RMD to post the terms of those settlements to the Sunshine portal.

The effective date of this legislation is July 1, 2025.

FISCAL IMPLICATIONS

The additional expenses RMD anticipates in the bill were not accounted for in the RMD budget request for FY 26. SB 220 will significantly increase expenses and is likely to result in a shortfall in the public liability fund.

SIGNIFICANT ISSUES

Section 3(B) would require the appointment of a loss prevention review team within thirty (30) days of notification of a substantial loss. This raises several concerns, all of which would tend to have an adverse impact on state liabilities and on the public liability fund.

Whether a claim will ultimately lead to a “substantial loss” is seldom known at the claims stage, but claimants have a financial interest in erring on the high side of estimating damages. This has been particularly salient since enactment of the New Mexico Civil Rights Act. Moreover, many claims never result in litigation or settlement. The investigation and discovery process—which cannot occur until RMD has learned of it—often reduces the perceived value of a claim. The appointment of a loss prevention review team “immediately upon becoming aware” would require a substantial commitment of financial and human resources to notice of a possible “substantial loss” that may never actually materialize into a “substantial loss” as defined in SB 220.

Section 3(E) provides that any materials adduced or created in connection with a loss review investigation shall remain confidential until after final disposition of a claim. This confidentiality is sure to be challenged by plaintiffs’ counsel. The anticipated litigation associated with defending this confidentiality provision is likely to dramatically increase costs. If claimants can successfully obtain this information, while litigation is proceeding, it will also increase the cost of defending and resolving the claim(s). There is also concern that even if the investigative materials were to remain confidential during the pendency of all related claims, it would increase the state’s liability by giving public notice of potential future claims. These reports may also

affect the types of claims brought in future litigation.

Lastly, most claims are not assigned an attorney immediately upon notice because, as discussed above, many notices of claim never materialize into litigation. Requiring the assignment of counsel in every *claimed* substantial loss will significantly increase case assignments to RMD contract defense counsel. This would be highly problematic as many of our contract firms have begun declining new case assignments from RMD due to firm capacity. If RMD were required to substantially increase case assignments to outside counsel, as called for in SB 220, RMD is concerned that current contract counsel capacity issues will be aggravated. If (even more) RMD contract counsel reach their case capacity, RMD will have even more difficulty defending the claims that are litigated. Fewer qualified firms with capacity to take on new case assignments is sure to negatively affect outcomes in litigated cases, which will increase the severity of monetary losses to the State.

The Senate Finance Committee (SFC) amended SB 220 to reduce the severity of the foreseeable impacts on RMD operations and the public liability fund by amending the definition of “substantial loss” (from \$250k to \$1 million); and by specifying that a loss prevention review team need only be appointed in cases that are pending litigation. Unfortunately, these amendments were struck from SB 220 on the Senate Floor.

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Note: It is impossible to estimate the additional costs associated with SB 220, but the cost will be substantial—both in terms of direct costs of implementation, and the secondary costs, which are even harder to forecast.

PERFORMANCE IMPLICATIONS

Contract counsel capacity. Assignment of counsel to all claims of “substantial losses” will substantially increase the case assignment expectations of RMD contract counsel and they do not have the capacity to absorb the additional assignments proposed in SB 220.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 220 is substantially similar to HB 287 introduced in 2024.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS