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HOUSE BILL 594

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Pauline K. Gubbels

AN ACT

**RELATING TO GOVERNMENTAL LIABILITY; EXPANDING THE DUTIES OF
THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES
DEPARTMENT TO REQUIRE THE PURCHASE OF INSURANCE COVERAGE FOR
FOSTER PARENTS; CHANGING THE TORT CLAIMS ACT DEFINITIONS TO
MAKE THE LAW CONSISTENT; AMENDING SECTIONS OF THE NMSA 1978.**

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

**Section 1. Section 15-7-3 NMSA 1978 (being Laws 1978,
Chapter 166, Section 8, as amended) is amended to read:**

**"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK
MANAGEMENT DIVISION. --**

**A. The risk management division of the general
services department may:**

- (1) enter into contracts;**
- (2) procure insurance, reinsurance or**

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1 employee group benefits; provided that any proposal or
2 contract for the procurement of any group health care benefits
3 shall be subject to the provisions of the Health Care
4 Purchasing Act; and provided further that reinsurance or
5 excess coverage insurance may be placed by private
6 negotiation, notwithstanding the provisions of the Procurement
7 Code, if the insurance or reinsurance has a restricted number
8 of interested carriers, the board determines that the coverage
9 is in the interest of the state and cannot otherwise be
10 procured for a reasonable cost and the director seeks the
11 advice and review of the board in the placement and in
12 designing private negotiation procedures;

13 (3) in the manner prescribed by Subsection E
14 of Section 9-17-5 NMSA 1978, after a notice and a public
15 hearing, prescribe by regulation reasonable and objective
16 underwriting and safety standards for governmental entities
17 and reasonable standards for municipal self-insurance pooling
18 agreements covering liability under the Tort Claims Act and
19 adopt such other regulations as may be deemed necessary;

20 (4) compromise, adjust, settle and pay
21 claims;

22 (5) pay expenses and costs;

23 (6) in the manner prescribed by Subsection E
24 of Section 9-17-5 NMSA 1978, prescribe by rule or regulation
25 the rating bases, assessments, penalties and risks to be

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1 covered by the public liability fund, the workers'
2 compensation retention fund and the public property reserve
3 fund and the extent such risks are to be covered;

4 (7) issue certificates of coverage in
5 accordance with Paragraph (6) of this subsection:

6 (a) to any governmental entity for any
7 tort liability risk covered by the public liability fund;

8 (b) to any governmental entity for any
9 personal injury liability risk or for the defense of any
10 errors or act or omission or neglect or breach of duty,
11 including the risks set forth in Paragraph (2) of Subsection B
12 and Paragraph (2) of Subsection D of Section 41-4-4 NMSA 1978;
13 and

14 (c) to any governmental entity for any
15 part of risk covered by the workers' compensation retention
16 fund, the surety bond fund or the public property reserve
17 fund;

18 (8) study the risks of all governmental
19 entities;

20 (9) initiate the establishment of safety
21 programs and adopt regulations to carry out such programs in
22 the manner prescribed by Subsection E of Section 9-17-5 NMSA
23 1978;

24 (10) hire a safety program director who shall
25 coordinate all safety programs of all state agencies;

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1 (11) consult with and advise local public
2 bodies on their risk management problems; and

3 (12) employ full-time legal counsel who shall
4 be under the exclusive control and supervision of the director
5 and the secretary of general services.

6 B. The risk management division of the general
7 services department shall provide liability coverage for the
8 following risks:

9 (1) a claim made pursuant to the provisions
10 of 42 U. S. C. Section 1983 against a nonprofit corporation,
11 members of its board of directors or its employees when the
12 claim is based upon action taken pursuant to the provisions of
13 a contract between the corporation and the department of
14 health under which the corporation provides developmental
15 disability services to clients of the department and the claim
16 is made by or on behalf of a client; and

17 (2) a claim made pursuant to the provisions
18 of 42 U. S. C. Section 1983 against a nonprofit corporation,
19 members of its board of directors or its employees when the
20 corporation operates a facility licensed by the department of
21 health as an intermediate care facility for the mentally
22 retarded and the claim is based upon action taken pursuant to
23 the provisions of the license and is made by or on behalf of a
24 resident of the licensed facility.

25 C. The director shall report his findings and

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1 recommendations, if any, for the consideration of each
2 legislature. The report shall include the amount and name of
3 any person receiving payment from the public liability fund of
4 any claim paid during the previous fiscal year exceeding one
5 thousand dollars (\$1,000). The report shall be made available
6 to the legislature on or before December 15 preceding each
7 regular legislative session.

8 D. The director shall purchase insurance coverage
9 for licensed foster parents providing care for children in the
10 legal custody of the human services department, the
11 corrections department, the department of health or the
12 children, youth and families department, but excluding those
13 foster parents certified by a licensed child placement agency.
14 The insurance shall insure against the risks of liability for
15 bodily injury and property damage arising from civil rights
16 violations or negligence resulting from activities related to
17 the care and physical custody of foster children. Limits of
18 liability shall be the amount of one hundred thousand dollars
19 (\$100,000) per occurrence. Premium costs shall be allocated
20 to and paid by the departments having legal custody of the
21 foster children and contracts with foster parents to care for
22 them. Coverage shall be effective from January 1, 2000. If
23 the director and the board determine that coverage is not
24 available, the departments shall be notified of that
25 determination no later than December 1, 1999. If coverage is

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1 determined not to be available, a foster parent who purchases
2 liability insurance covering the risks enumerated in this
3 section with at least the specified limits shall be reimbursed
4 by the department with which the foster parent has contracted
5 to provide care for the cost of the premium incurred for the
6 described coverage and minimum limit upon presenting proof of
7 purchase to the department. "

8 Section 2. Section 41-4-3 NMSA 1978 (being Laws 1976,
9 Chapter 58, Section 3, as amended) is amended to read:

10 "41-4-3. DEFINITIONS. -- As used in the Tort Claims Act:

- 11 A. "board" means the risk management advisory
12 board;
- 13 B. "governmental entity" means the state or any
14 local public body as defined in Subsections C and H of this
15 section;
- 16 C. "local public body" means all political
17 subdivisions of the state and their agencies,
18 instrumentalities and institutions and all water and natural
19 gas associations organized pursuant to Chapter 3, Article 28
20 NMSA 1978;
- 21 D. "law enforcement officer" means any full-time
22 salaried public employee of a governmental entity whose
23 principal duties under law are to hold in custody any person
24 accused of a criminal offense, to maintain public order or to
25 make arrests for crimes, or members of the national guard when

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1 called to active duty by the governor;

2 E. "maintenance" does not include:

3 (1) conduct involved in the issuance of a
4 permit, driver's license or other official authorization to
5 use the roads or highways of the state in a particular manner;
6 or

7 (2) an activity or event relating to a public
8 building or public housing project that was not foreseeable;

9 F. "public employee" means any officer, employee
10 or servant of a governmental entity, excluding independent
11 contractors except for individuals defined in Paragraphs [~~(7)~~,
12 ~~(8)~~, ~~(10)~~ and ~~(14)~~] (6), (7), (9) and (13) of this subsection,
13 or of a corporation organized pursuant to the Educational
14 Assistance Act or the Mortgage Finance Authority Act and
15 including:

16 (1) elected or appointed officials;

17 (2) law enforcement officers;

18 (3) persons acting on behalf or in service of
19 a governmental entity in any official capacity, whether with
20 or without compensation;

21 [~~(4) licensed foster parents providing care~~
22 ~~for children in the custody of the human services department,~~
23 ~~corrections department or department of health, but not~~
24 ~~including foster parents certified by a licensed child~~
25 ~~placement agency;~~

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1 ~~(5)~~ (4) members of state or local selection
2 panels established pursuant to the Adult Community Corrections
3 Act;

4 ~~(6)~~ (5) members of state or local selection
5 panels established pursuant to the Juvenile Community
6 Corrections Act;

7 ~~(7)~~ (6) licensed medical, psychological or
8 dental arts practitioners providing services to the
9 corrections department pursuant to contract;

10 ~~(8)~~ (7) members of the board of directors
11 of the New Mexico comprehensive health insurance pool;

12 ~~(9)~~ (8) individuals who are members of
13 medical review boards, committees or panels established by the
14 educational retirement board or the retirement board of the
15 public employees retirement association;

16 ~~(10)~~ (9) licensed medical, psychological or
17 dental arts practitioners providing services to the children,
18 youth and families department pursuant to contract;

19 ~~(11)~~ (10) members of the board of directors
20 of the New Mexico educational assistance foundation;

21 ~~(12)~~ (11) members of the board of directors
22 of the New Mexico student loan corporation;

23 ~~(13)~~ (12) members of the New Mexico
24 mortgage finance authority; and

25 ~~(14)~~ (13) volunteers, employees and board

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members of court-appointed special advocate programs;

G. "scope of duties" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."