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SENATE BILL 471

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

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO RISK MANAGEMENT; PROVIDING THAT RECORDS CONCERNING CLAIMS AGAINST GOVERNMENTAL ENTITIES SHALL BE OPEN FOR PUBLIC INSPECTION; PROVIDING THAT THE ATTORNEY GENERAL HAS EXCLUSIVE AUTHORITY TO REPRESENT THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT AGAINST CLAIMS.

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~~] rule reasonable and
16 objective underwriting and safety standards for governmental
17 entities and reasonable standards for municipal self-insurance
18 pooling agreements covering liability under the Tort Claims
19 Act and adopt such other regulations as may be deemed
20 necessary;

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

23 (5) pay expenses and costs;

24 (6) in the manner prescribed by Subsection E
25 of Section 9-17-5 NMSA 1978, prescribe by rule [~~or regulation~~]

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

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

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

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

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

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

21 (9) initiate the establishment of safety
22 programs and adopt regulations to carry out such programs in
23 the manner prescribed by Subsection E of Section 9-17-5 NMSA
24 1978;

25 (10) hire a safety program director who shall

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1 coordinate all safety programs of all state agencies;

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

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

7 (12) contract with the attorney general for
8 legal services. The attorney general has exclusive authority
9 to represent the risk management division in claims against
10 governmental entities or public employees and, in exercising
11 that authority, may contract with private law firms or
12 attorneys on a per-hour basis.

13 B. The risk management division of the general
14 services department shall provide liability coverage for the
15 following risks:

16 (1) a claim made pursuant to the provisions
17 of 42 U. S. C. Section 1983 against a nonprofit corporation,
18 members of its board of directors or its employees when the
19 claim is based upon action taken pursuant to the provisions of
20 a contract between the corporation and the department of
21 health under which the corporation provides developmental
22 disability services to clients of the department and the claim
23 is made by or on behalf of a client; and

24 (2) a claim made pursuant to the provisions
25 of 42 U. S. C. Section 1983 against a nonprofit corporation,

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1 members of its board of directors or its employees when the
2 corporation operates a facility licensed by the department of
3 health as an intermediate care facility for the mentally
4 retarded and the claim is based upon action taken pursuant to
5 the provisions of the license and is made by or on behalf of a
6 resident of the licensed facility.

7 C. The director shall report his findings and
8 recommendations, if any, for the consideration of each
9 legislature. The report shall include the amount and name of
10 any person receiving payment from the public liability fund of
11 any claim paid during the previous fiscal year exceeding one
12 thousand dollars (\$1,000). The report shall be made available
13 to the legislature on or before December 15 preceding each
14 regular legislative session. "

15 Section 2. Section 15-7-9 NMSA 1978 (being Laws 1981,
16 Chapter 280, Section 1) is amended to read:

17 "15-7-9. CONFIDENTIALITY OF RECORDS--PENALTY.--

18 A. The following records created or maintained by
19 the risk management division of the general services
20 department are confidential and shall not be subject to any
21 right of inspection by any person not a state officer, member
22 of the legislature or state employee within the scope of his
23 official duties:

24 (1) records pertaining to insurance coverage;
25 provided any record of a particular coverage shall be

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1 available to any public officer, public employee or
2 governmental entity insured under such coverage; and

3 (2) records pertaining to claims for damages
4 or other relief against any governmental entity or public
5 officer or employee; provided such records shall be subject to
6 public inspection by New Mexico citizens [~~one hundred eighty~~
7 ~~days~~] after the latest of the following dates:

8 (a) the date all statutes of limitation
9 applicable to the claim have run;

10 (b) the date all litigation involving
11 the claim and the occurrence giving rise thereto has been
12 brought to final judgment and all appeals and rights to appeal
13 have been exhausted;

14 (c) the date the claim is fully and
15 finally settled; or

16 (d) the date the claim has been placed
17 on closed status.

18 B. Records protected pursuant to Subsection A of
19 this section shall be made available as necessary for purposes
20 of audit or defense. Any person performing such audit or
21 providing such defense shall keep such records confidential,
22 except as required otherwise by law.

23 C. Any person who reveals records protected
24 pursuant to Subsection A of this section to another person in
25 violation of this section is guilty of a misdemeanor and

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1 shall, upon conviction, be fined not more than one thousand
2 dollars (\$1,000). The state shall not employ any person so
3 convicted for a period of five years after the date of
4 conviction. "

5 Section 3. Section 15-7-10 NMSA 1978 (being Laws 1982,
6 Chapter 19, Section 2) is amended to read:

7 "15-7-10. LEGAL DEFENSE CONTRACTS--RENEWAL. --Any valid
8 contract between the [~~risk management division~~] attorney
9 general and any law firm, to defend claims against the state
10 or any of its public employees pursuant to Subsection B of
11 Section 41-4-4 NMSA 1978, shall be automatically extended for
12 the purpose of and as long as necessary for completing and
13 concluding any matter in litigation, including appeals,
14 referred to the firm for defense prior to the termination date
15 stated in the contract or any applicable amendment thereto.
16 Automatic renewal pursuant to this section applies only to
17 matters which were in litigation and were referred to the law
18 firm prior to the contract termination date and does not apply
19 to regular contract renewals. This section does not affect
20 the [~~director's~~] attorney generals's discretion to assign or
21 to terminate a prior assignment and reassign any matter to any
22 law firm. This section does not apply where nonrenewal is
23 approved:

24 A. by two-thirds majority vote of the board
25 members present and voting and by consent of a majority of the

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1 state public employee defendants being represented in each
2 matter; or

3 B. by simple majority vote of the board members
4 present and voting, consent of the law firm and consent of a
5 majority of the state public employee defendants being
6 represented in each matter. "

7 Section 4. Section 41-4-23 NMSA 1978 (being Laws 1977,
8 Chapter 386, Section 17, as amended) is amended to read:

9 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES. --

10 A. There is created the "public liability fund".
11 The fund and any income from the fund shall be held in trust,
12 deposited in a segregated account and invested by the general
13 services department with the prior approval of the state board
14 of finance.

15 B. Money deposited in the public liability fund
16 may be expended by the risk management division of the general
17 services department:

18 (1) to purchase tort liability insurance for
19 state agencies and their employees and for any local public
20 body participating in the public liability fund and its
21 employees;

22 (2) to contract with one or more consulting
23 or claims adjusting firms pursuant to the provisions of
24 Section 41-4-24 NMSA 1978;

25 (3) to defend, save harmless and indemnify

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1 any state agency or employee of a state agency or a local
2 public body or an employee of such local public body for any
3 claim or liability covered by a valid and current certificate
4 of coverage to the limits of such certificate of coverage;

5 (4) to pay claims and judgments covered by a
6 certificate of coverage;

7 (5) to contract with [~~one or more attorneys~~
8 ~~or law firms on a per-hour basis, or with~~] the attorney
9 general to defend tort liability claims against governmental
10 entities and public employees acting within the scope of their
11 duties;

12 (6) to pay [~~any~~] costs and expenses incurred
13 in carrying out the provisions of this section;

14 (7) to insure or provide certificates of
15 coverage to school bus contractors and their employees,
16 notwithstanding Subsection F of Section 41-4-3 NMSA 1978, for
17 any comparable risk for which immunity has been waived for
18 public employees pursuant to Section 41-4-5 NMSA 1978, if the
19 coverage is commercially unavailable; except that coverage for
20 exposure created by Sections 41-4-9, 41-4-10 and 41-4-12 NMSA
21 1978 shall be provided to its member public school districts
22 and participating other educational entities of the public
23 school insurance authority, by the authority, and except that
24 coverage shall be provided to a contractor and his employees
25 only through the public school insurance authority or its

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1 successor, unless the district to which the contractor
2 provides services has been granted a waiver by the authority
3 or the authority is not offering the coverage for the fiscal
4 year for which the division offers its coverage. A local
5 school district to which the division may provide coverage may
6 provide for marketing and servicing to be done by licensed
7 insurance agents who shall receive reasonable compensation for
8 their services; and

9 (8) to insure or provide certificates of
10 coverage for any ancillary coverage typically found in
11 commercially available liability policies provided to
12 governmental entities, if the coverage is commercially
13 unavailable.

14 C. No settlement of any claim covered by the
15 public liability fund in excess of five thousand dollars
16 (\$5,000) shall be made unless the settlement has first been
17 approved in writing by the director of the risk management
18 division of the general services department. This subsection
19 shall not be construed to limit the authority of an insurance
20 carrier, covering any liability under the Tort Claims Act, to
21 compromise, adjust and settle claims against governmental
22 entities or their public employees.

23 D. Claims against the public liability fund shall
24 be made in accordance with rules [or regulations] of the
25 director of the risk management division of the general

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1 services department. If the director of the risk management
2 division has reason to believe that the fund, including any
3 transfers to the fund from the risk reserve, would be
4 exhausted by payment of all claims allowed during a particular
5 state fiscal year, pursuant to ~~[regulations]~~ rules of the risk
6 management division, the amounts paid to each claimant and
7 other parties obtaining judgments shall be prorated, with each
8 party receiving an amount equal to the percentage his own
9 payment bears to the total of claims or judgments outstanding
10 and payable from the fund. Any amounts due and unpaid as a
11 result of such proration shall be paid in the following fiscal
12 years.

13 E. On or before June 15 of each fiscal year, the
14 risk management advisory board shall calculate the current
15 cash balance in the public liability fund, all revenue
16 projected to be deposited into the fund during the next fiscal
17 year and all expenditures projected to be made from the fund
18 during the next fiscal year. Within fifteen days of the
19 calculation, ninety percent of all projected excess cash
20 balances shall be transferred to the risk reserve. Excess
21 cash balances shall be calculated as the current cash balance
22 plus projected revenue minus projected expenditures. "

23 Section 5. TEMPORARY PROVISION--TRANSFER OF CONTRACTS. --
24 On the effective date of this act, all contracts of the risk
25 management division of the general services department between

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1 the division and private attorneys or law firms are
2 transferred to the attorney general.

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 22, 1999
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8 Mr. President:
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10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
11 has been referred
12

13 SENATE BILL 471
14

15 has had it under consideration and reports same WITHOUT
16 RECOMMENDATION, and thence referred to the JUDICIARY
17 COMMITTEE.
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20 Respectfully submitted,
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FORTY-SECOND LEGISLATURE
SECOND SESSION

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KEYBOARD(TYPE SLUGS)

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Roman M. Maes, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 4 Against

Yes: 5

No: Kidd, Kysar, McKibben, Rawson

Excused: Maes

Absent: None

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