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F I S C A L I M P A C T R E P O R T

SPONSOR:	Sanchez, R.G.	DATE TYPED:	02/07/00	HB	465
SHORT TITLE:	Educational Institutions Liability Risks			SB	
			ANALYST:	Carrillo	

APPROPRIATION

Appropriation Contained		**Estimated Additional Impact**		**Recurring or Non-Rec**	**Fund Affected**
FY00	**FY01**	**FY00**	**FY01**		
			See Fiscal Impact Section	Recurring	Public Liability Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		**Subsequent Years Impact**	**Recurring or Non-Rec**	**Fund Affected**
FY00	**FY01**			
	See Fiscal Impact Section		Recurring	Public Liability Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to

SOURCES OF INFORMATION

General Services Department

SUMMARY

Synopsis of Bill

House Bill 465 proposes to amend Section 15-7-2 NMSA 1978 pertaining to the Risk Management Division (RMD) of the General Services Department (GSD) and the provision of liability risk coverages. HB 465 would allow the institutions of higher education to "opt out" of the Risk Management Divisions's public liability coverages. The effective date included in the proposed legislation is July 1, 2000. Currently, local public bodies have this option under the Tort Claims Act's home rule provision.

The state higher educational institutions affected by HB 465 are: the University of New Mexico, New Mexico State University, New Mexico Highlands University, Western New Mexico University, Eastern New Mexico University, New Mexico Institute of Mining and Technology, New Mexico Military Institute, New Mexico School for the Visually Handicapped, New Mexico School for the Deaf, and the Northern New Mexico State School (Northern New Mexico Community College).

According to staff from GSD, the Tort Claims Act proscribes the breadth of insurance coverage state agencies must carry. Pursuant to the provisions in HB465, state higher educational institutions must still carry coverage in accordance with the Tort Claims Act. The state higher educational institutions may elect to insure themselves, either by purchasing commercial insurance, or by self-insuring. This option extends to healthcare for students of these state higher educational institutions. The state higher educational institutions may continue to "opt in", and continues to obtain public liability insurance coverages from RMD, as is the current practice.

The GSD staff also notes the bill would not affect the coverage provided by RMD for property or workers compensation exposures. No appropriations are made and the bill does not waive or affect sovereign immunity or any other limitations or protections under the Tort Claims Act or any other law. The bill creates no new legal causes of action for plaintiffs.

Significant Issues

GSD staff expresses the following comments:

- •HB465 decentralizes risk management function by impairing the state's ability to analyze, control and prevent loss in significant ways.
- •The current RMD member pool will be diminished, thereby increasing liability premiums for remaining pool members.
- •No baseline requirements for insurance administration expertise are set, and institutions "opting out" are not mandated to obtain equal or superior coverage at equal or lesser costs.
- •Claim adjustment and administration will be duplicated at significant cost.
- •The legislature would lose control of the accountability it now has through centralized services in RMD, and the ability to evaluate success of the program.
- •If an institution has "opted out"of the RMD pool and subsequently desires to "opt back in", the institution may do so by giving notice of the repeal of its ordinance or resolution to RMD prior to December 1 of any calendar year and paying such assessments as may be determined by RMD.
- •State higher educational institutions with loss ratios in excess of 100 percent could be allowed to withdraw from the RMD pool only upon payment of any deficit amount.

FISCAL IMPLICATIONS

GSD staff reports that the state higher education institutions "opting out" of the RMD pool will no longer pay into the public liability fund. Instead, such a state higher education institution will purchase coverage commercially or self-insure by establishing and maintaining sufficient reserves in its budget (or a combination of thee methods).

Additionally, GSD staff notes the fiscal impact on the public liability fund would be significant. At present, state higher educational institutions pay about 39 percent of the state liability premium. Some or all of those contributing agencies may choose to "opt out" of the pool and thereby reduce the public liability fund by their corresponding annual contribution. Conversely, the public liability fund will also see a reduction in expenditures, as claims related to these agencies will no longer be paid out of this fund.

According to GSD staff HB 46 unfairly imposes fiscal penalties on remaining pool members because:

1. premiums will be increased to compensate for the smaller, weaker pool;
2. inheritance of significant fund deficits created by withdrawing entities, although those entities posses the financial resources to replenish the fund through premium assessments (i.e., UNM/UNMH);
3. State oversight of state higher educational institutions that opt out of the RMD programs will be diminished, and
4. while state higher educational institutions may be able to show short term savings, it is unlikely that they could improve on long-term performance of the larger group.

Lastly GSD states HB 465 does not address the issue of refunds to state higher educational institutions that are in a positive fund position at time of withdrawal. It is estimated the future impact to the Public Liability Fund, beginning in FY2001, would be between $1 million and $1.75 million per year. Factors are startup costs for the institutions, plus costs of duplicating services now provided through RMD. Impact would depend on what strategies are used by the state higher educational institutions (e.g., all independent vs. some/all pool, some self-insure).

ADMINISTRATIVE IMPLICATIONS

RMD will no longer assess, collect or control insurance funds for those state higher educational institutions choosing to "opt out" of the pool, and will no longer manage any claims arising while the "opt out" resolution is in effect.

Written tort claim notice for affected agencies will no longer be presented to RMD. Instead, the notice will be presented to the President of the state higher educational institution. The 90-day notice limitation does not change.

WJC/gm