

AN ACT

RELATING TO THE PUBLIC LIABILITY FUND; AMENDING SECTION 41-4-23 NMSA 1978 (BEING LAWS 1977, CHAPTER 386, SECTION 17, AS AMENDED) TO RAISE THE SETTLEMENT AMOUNT THAT CAN BE MADE BEFORE FIRST BEING APPROVED BY THE DIRECTOR OF THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT.

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

Section 1. Section 41-4-23 NMSA 1978 (being Laws 1977, Chapter 386, Section 17, as amended) is amended to read:

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

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

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

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

(2) to contract with one or more consulting or claims adjusting firms pursuant to the provisions of

Section 41-4-24 NMSA 1978;

(3) to defend, save harmless and indemnify any state agency or employee of a state agency or a local public body or an employee of such local public body for any claim or liability covered by a valid and current certificate of coverage to the limits of such certificate of coverage;

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

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

(6) to pay costs and expenses incurred in carrying out the provisions of this section;

(7) to create a retention fund for any risk covered by a certificate of coverage;

(8) to insure or provide certificates of coverage to school bus contractors and their employees, notwithstanding Subsection F of Section 41-4-3 NMSA 1978, for any comparable risk for which immunity has been waived for public employees pursuant to Section 41-4-5 NMSA 1978, if the coverage is commercially unavailable; except that coverage for exposure created by Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978 shall be provided to its member public school

districts and participating other educational entities of the public school insurance authority, by the authority, and except that coverage shall be provided to a contractor and his employees only through the public school insurance authority or its successor, unless the district to which the contractor provides services has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services; and

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

C. No settlement of any claim covered by the public liability fund in excess of twenty-five thousand dollars (\$25,000) shall be made unless the settlement has first been approved in writing by the director of the risk management division of the general services department. This subsection shall not be construed to limit the authority of an insurance carrier, covering any liability under the Tort Claims Act, to compromise, adjust and settle claims against

governmental entities or their public employees.

D. Claims against the public liability fund shall be made in accordance with rules or regulations of the director of the risk management division of the general services department. If the director of the risk management division has reason to believe that the fund would be exhausted by payment of all claims allowed during a particular state fiscal year, pursuant to regulations of the risk management division, the amounts paid to each claimant and other parties obtaining judgments shall be prorated, with each party receiving an amount equal to the percentage his own payment bears to the total of claims or judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years. "
