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FISCAL IMPACT REPORT

ORIGINAL DATE 1/19/2008

SPONSOR Miera LAST UPDATED _____ HB 19

SHORT TITLE Insurance for Private Use of Public Schools SB _____

ANALYST Aguilar

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

New Mexico Public School Insurance Authority (NMPSIA)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 19 appropriates \$200 thousand from the general fund to the Public School Insurance Fund to obtain insurance against claims arising from the use of school facilities by private persons.

HB19 provides for NMPSIA to promulgate rules to establish policies to be followed by participating members relating to the use of volunteers.

The bill also provides for NMPSIA to promulgate rules to establish policies to be followed by participating members relating to the use of school facilities.

The bill also provides for NMPSIA to provide insurance for participating members against bodily injury, personal injury, or property damage related to the use of school facilities by private persons.

The bill sets limits of \$1 million for each occurrence and provides that coverage will only apply if the participating member was following the policy adopted by NMPSIA.

FISCAL IMPLICATIONS

The appropriation of \$200 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall revert to the general fund.

NMPSIA notes that historically, losses incurred for the use of school premises by outside groups have averaged \$100 thousand annually. The authority estimates premiums for this additional coverage will cost between \$50 thousand and \$100 thousand annually. The exact cost is difficult to project as not all after-school use has been reported and participation in the Tenant User Liability Insurance Policy offered by NMPSIA for these purposes has been low.

Language in the bill only provides for those schools participating in NMPSIA to be affected by the legislation. Albuquerque Public Schools (APS) is self insured and does not participate in NMPSIA programs. It appears APS, with approximately one-third of the students in the state and presumably one-third of the school buildings, would not be required to follow the rules established for implementing this program.

Although the appropriation is to the Public School Insurance Fund, this appears to be a recurring appropriation for insurance, and should be distributed through the state equalization guarantee distribution. If this occurs, APS would receive one third of the distribution without participating in the program. NMPSIA notes if the distribution is directed through the SEG, an additional \$70 thousand would be needed to make certain NMPSIA receive the amount necessary to implement the program.

SIGNIFICANT ISSUES

Some schools currently allow volunteers into schools with unsupervised access to students without determining whether they pose a danger to students. This bill provides for NMPSIA to establish policies to meet this need. As a practice, school districts establish policies to meet district needs with policies between districts being significantly different. This would provide uniformity across the state as volunteers move from district to district.

Currently schools may allow building use by outside groups and coverage is provided in one of two ways: the school district is named as an additional insured on the user's policy or limited additional premises liability is provided through NMPSIA and billed to the user through the Tenant User Liability Insurance Policy (TULIP).

The Attorney General's office notes provisions contained in the bill places NMPSIA in a policy-making role with regard to the use of volunteers and the private use of school facilities, apparently without input from the governing bodies of its members. It is possible that placing NMPSIA in this new role could subject the authority to liability based on the contents of the policies required.

PERFORMANCE IMPLICATIONS

It appears that NMPSIA should be able to absorb the costs required to promulgate rules.

TECHNICAL ISSUES

NMPSIA notes the following technical concerns:

For consideration by the Legislature is whether it is appropriate for the cost of insurance for the use of school buildings by private users by paid for using public funds.

The Legislature may wish to include APS in the legislation and distribute the appropriation through the state equalization guarantee distribution. This places the appropriation in the public school support base, precludes annual categorical appropriations and assures that all schools statewide are covered by the provisions of this bill.

ALTERNATIVES

The Legislature may wish to consider enacting the language requiring NMPSIA to establish rules regarding both volunteers and the use of school facilities by private persons but instead of funding the added liability insurance, requiring districts to provide proof of insurance, either by including the school as an added insured on a group's policy or by purchasing insurance through the TULIP program.

PA/mt