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HOUSE BILL 110

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2009**

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO ATTORNEY FEES; REQUIRING ATTORNEYS REPRESENTING  
GOVERNMENTAL ENTITIES TO EXAMINE AND VERIFY A PLAINTIFF'S CLAIM  
FOR ATTORNEY FEES AND COSTS; REQUIRING THE RISK MANAGEMENT  
DIVISION OF THE GENERAL SERVICES DEPARTMENT TO DETERMINE THE  
REASONABLENESS OF ATTORNEY FEES AND COSTS PRIOR TO PAYMENT;  
AMENDING SECTIONS OF THE TORT CLAIMS ACT.

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

Section 1. Section 41-4-1 NMSA 1978 (being Laws 1976,  
Chapter 58, Section 1, as amended) is amended to read:

"41-4-1. SHORT TITLE.--~~[Sections 41-4-1 through 41-4-27]~~  
Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort  
Claims Act"."

Section 2. Section 41-4-14 NMSA 1978 (being Laws 1976,  
Chapter 58, Section 13) is amended to read:

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1 "41-4-14. DEFENSES--ATTORNEY FEES.--

2 A. A governmental entity and its public employees  
3 may assert any defense available under the law [~~of New Mexico~~].

4 B. An attorney representing a governmental entity  
5 or public employee shall examine and verify a plaintiff's claim  
6 for attorney fees and costs when such a claim becomes part of  
7 any settlement or judgment against the entity or employee and  
8 shall object to payment of attorney fees and costs not  
9 reasonably necessary for the prosecution of the tort claim or  
10 other legal action."

11 Section 3. Section 41-4-23 NMSA 1978 (being Laws 1977,  
12 Chapter 386, Section 17, as amended) is amended to read:

13 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

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

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

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

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1 (2) to contract with one or more consulting or  
2 claims adjusting firms pursuant to the provisions of Section  
3 41-4-24 NMSA 1978;

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

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

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

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

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

19 (8) to insure or provide certificates of  
20 coverage to school bus contractors and their employees,  
21 notwithstanding the provisions of Subsection F of Section  
22 41-4-3 NMSA 1978, for any comparable risk for which immunity  
23 has been waived for public employees pursuant to Section 41-4-5  
24 NMSA 1978, if the coverage is commercially unavailable; except  
25 that coverage for exposure created by Sections 41-4-9, 41-4-10

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1 and 41-4-12 NMSA 1978 shall be provided to its member public  
2 school districts and [~~participating~~] other participating  
3 educational entities of the public school insurance authority,  
4 by the authority, and except that coverage shall be provided to  
5 a contractor and [~~his~~] the contractor's employees only through  
6 the public school insurance authority or its successor, unless  
7 the district to which the contractor provides services has been  
8 granted a waiver by the authority or the authority is not  
9 offering the coverage for the fiscal year for which the  
10 division offers its coverage. A local school district to which  
11 the division may provide coverage may provide for marketing and  
12 servicing to be done by licensed insurance agents who shall  
13 receive reasonable compensation for their services; and

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

19 C. No settlement of any claim covered by the public  
20 liability fund in excess of twenty-five thousand dollars  
21 (\$25,000) shall be made unless the settlement has first been  
22 approved in writing by the director of the risk management  
23 division of the general services department. This subsection  
24 shall not be construed to limit the authority of an insurance  
25 carrier, covering any liability under the Tort Claims Act, to

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1 compromise, adjust and settle claims against governmental  
2 entities or their public employees.

3 D. No payment on invoices from contract attorneys  
4 or law firms shall be made without a determination that the  
5 attorney fees incurred and the costs expended were reasonably  
6 necessary to defend the specific claim or claims against the  
7 governmental entity or public employee acting within the scope  
8 of duties.

9 ~~[D-]~~ E. Claims against the public liability fund  
10 shall be made in accordance with rules or regulations of the  
11 director of the risk management division of the general  
12 services department. If the director of the risk management  
13 division has reason to believe that the fund would be exhausted  
14 by payment of all claims allowed during a particular state  
15 fiscal year, pursuant to regulations of the risk management  
16 division, the amounts paid to each claimant and other parties  
17 obtaining judgments shall be prorated, with each party  
18 receiving an amount equal to the percentage ~~[his]~~ the party's  
19 own payment bears to the total of claims or judgments  
20 outstanding and payable from the fund. Any amounts due and  
21 unpaid as a result of such proration shall be paid in the  
22 following fiscal years."

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