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

SPONSOR Sapien **ORIGINAL DATE** 03/02/11 **LAST UPDATED** **HB**

SHORT TITLE State Agency Risk Coverage Funding **SB** 508

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NA	*Possibly Significant/See Fiscal Impact	*Possibly Significant/See Fiscal Impact	*Possibly Significant/See Fiscal Impact	Recurring	General Fund/Other State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
General Services Department (GSD)
Department of Transportation (DOT)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 508 amends Section 15-7-3.2 NMSA so that the Risk Management Division, General Services Department, no longer assesses a state agency for risks covered by the public liability fund or the public property reserve fund. Instead, RMD would submit in its budget request an "estimate" of the amount needed during the subsequent fiscal year to cover all state agencies for risks to the public liability fund or the public property reserve fund plus any amounts needed for reserves. It also bars the governor from submitting a budget recommendation without such an estimate.

FISCAL IMPLICATIONS

GSD sets risk premiums that reflect an agency's loss history and exposure to future losses with regard to a particular line of coverage such as automobile liability, civil rights, and medical malpractice. These rates are subject to the Statewide Cost Allocation Plan (SWCAP). The SWCAP is a tool that enables state agencies to recover indirect costs from federal funding sources. SWCAP is mandated by the federal Office of Management and Budget (OMB) Circular

A-87. The Comprehensive Financial Report Unit (CAFR) prepares and submits New Mexico's SWCAP plan six months prior to the beginning of the upcoming fiscal year. This plan must include information related to how the state proposes to claim indirect costs for GSD risk premiums.

*Currently, a significant portion of the premiums paid for public liability and public property premiums are paid from non-general fund sources including internal services funds/interagency transfers, other state funds and federal funds. For example, the largest payers of risk premiums include the following agencies:

[redacted]

Collectively, the ten agencies identified above will be responsible for paying 78 percent of the total risk premiums ($33.1 million out of $42.7 million) assessed for public liability and public property coverage in FY12. Also, the agencies identified above receive a significant portion of their funding from federal sources. It is unclear how the state would replace the federal participation from agencies such as the Department of Transportation, Department of Public Safety, Corrections Department, Children, Youth and Families and Department, Department of Health, and Human Services Department. Other large payers not mentioned above include New Mexico Highlands University, Eastern New Mexico University, Miners Hospital, and Energy Minerals and Natural Resources Department that receive funding from sources including internal service funds/interagency transfers and federal funds.

In addition, if the process for charging each agency for their individual losses were to be eliminated, there would be little incentive for an agency to engage in loss prevention activities.

SIGNIFICANT ISSUES

The Public Liability program includes law enforcement, medical professional, civil rights, automobile liability and general liability. It is subject to the provisions of the *New Mexico Tort Claims Act.* The State began its self-insured public liability program in 1977, with an initial appropriation of $2.5 million from the General Fund. All of this money plus earned interest was repaid to the General Fund in 1992. Each year, the public liability self-insurance program receives revenue from premium assessments of self-insured State entities as well as from cities, counties and other local public bodies.

The State obtained excess insurance for State agencies (including Universities but not local political subdivisions) for public liability, excluding medical malpractice. Coverage was effective on July 1, 1994 at a $500,000 retention, transitioning to a $1,000,000 retention between July 1, 2001 and June 30, 2005, and finally on July 1, 2005 at $5,000,000.

There have been frequent changes in the entities covered by the public liability program. Individual entities have joined and withdrawn in response to changes in the availability and cost of coverage in traditional insurance markets and pools. Starting in 1985-86 many local public entities (mostly cities and counties) chose to obtain coverage for their general liability and automobile liability exposures through the public liability program. By the end of 1988-89, however, most of these entities had again found attractive coverage from alternatives sources and had withdrawn from the public liability program.

The Public Property program includes automobile physical damage and other property. The State began its self-insured public property program in 1978, with an initial appropriation of $3,000,000 from the General Fund. All of this money plus earned interest repaid to the General Fund in 1992. Each claim period, the public property program receives revenue from premium assessments of self-insured state entities.

Fine arts and automobile physical damage exposures were brought into the public property program in 1983. The program began providing automobile physical damage coverage for other self-insured state entities in 1985. The public property program was commercially insured until August 13, 1980, by as many as 400 separate insurance policies. Between August 13, 1980 and June 30, 2006, the Property Fund has maintained a self-insurance retention of $100,000 per loss. As of July 1, 2006, the property retention is $500,000.

OTHER SUBSTANTIVE ISSUES

GSD sets risk premiums that reflect an agency's loss history and exposure to future losses with regard to a particular line of coverage such as automobile liability, civil rights, and medical malpractice. GSD, with the support of the Risk Management Advisory Board, established a goal of accruing a fund balance of at least 50 percent in each of the risk funds over a 3 year period, beginning in FY09. GSD reported that at the end of FY10, 5 of the 6 risk funds (public liability, public property, state and local public body unemployment compensation and surety bond) exceed the 50 percent goal while the workers' compensation fund remains deficient.

According to the June 30, 2010 actuarial analysis of the risk program GSD reports that the financial condition of the risk management funds has begun to deteriorate as losses related to fire, flood and smoke damage along with the helicopter crash last year have begun to impact reserves. For FY10, the executive developed a plan to reduce risk rates for all lines of coverage under the public property and public liability programs by an average 6.7 percent, or $4.6 million. By reducing agency assessments, DFA realized a general fund savings of $1.2 million.

A similar approach was taken again during the 2010 2nd Special Legislative session and rates were reduced for FY11. LFC staff and the executive developed a plan to reduce risk rates for all lines of coverage under the public property and public liability programs by an average 12 percent, or $7.4 million. Overall, the rates charged for public property coverage were reduced by

50 percent or $3.9 million.

AGO also notes the following:

> No significant legal issues but HB 508 does raise some policy concerns both pro and con: Historically, the assessment for each agency has taken into factors such as the risk history of the agency and the future risk posed, which is affected by the differing level of risk assigned to state actors under the Tort Claims Act (police officer's have greater liability than general employee for instance). Therefore to pool all agencies risk assessments together may not allow the agency ample opportunity to assess its own risk and make changes to avoid future risk. On the other hand, since a number of agencies have had difficulty paying for their coverage under these funds, most notably enterprise funds, this may be a way to avoid the inability to pay for such risk by grouping such assessments under General Services Department's budget.

DA/mew