

1 SENATE BILL 573

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

11 RELATING TO WRONGFUL INCARCERATION; PROVIDING COMPENSATION TO A
12 PERSON WHO IS EXONERATED AFTER BEING WRONGFULLY CONVICTED AND
13 IMPRISONED; PROVIDING FOR PAYMENT FOR EACH YEAR OF WRONGFUL
14 INCARCERATION FROM THE PUBLIC LIABILITY FUND.

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

17 SECTION 1. [NEW MATERIAL] COMPENSATION FOR WRONGFUL
18 INCARCERATION.--

19 A. If a person convicted and imprisoned for a crime
20 is later exonerated for that crime by a court pursuant to
21 Section 31-1A-2 NMSA 1978 or pursuant to an acquittal after a
22 second or subsequent trial, the court shall hold a hearing to
23 determine the length of time that the person was incarcerated
24 for the crime.

25 B. After determining the length of time that the

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1 person was wrongfully incarcerated, the court shall enter an
2 order awarding damages in the amount of fifty thousand dollars
3 (\$50,000) for each year the person was wrongfully incarcerated,
4 up to twenty years. The court shall adjust the damage award
5 proportionally for any partial years of incarceration.

6 C. Damages awarded under this section shall not be
7 offset by any services provided or expenses incurred by the
8 state or a political subdivision of the state, including
9 expenses incurred to secure or maintain the person in custody
10 or to feed, clothe or provide medical services to the person
11 while in custody.

12 D. A person shall be entitled to compensation only
13 for the time that the person would not otherwise have been
14 incarcerated pursuant to another sentence.

15 E. A person's acceptance of a damages award
16 pursuant to this section shall be final and conclusive and
17 constitute a complete release by the person of any claim
18 against the state or a political subdivision of the state and
19 shall operate as a bar to any action by the person against the
20 state or a political subdivision of the state with respect to
21 the conviction and incarceration.

22 F. Upon presentation of a court order awarding
23 damages pursuant to this section, payment shall be made from
24 the public liability fund by the risk management division of
25 the general services department.

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1 SECTION 2. Section 41-4-23 NMSA 1978 (being Laws 1977,
2 Chapter 386, Section 17, as amended) is amended to read:

3 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

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

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

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

16 (2) to contract with one or more consulting or
17 claims adjusting firms pursuant to the provisions of Section
18 41-4-24 NMSA 1978;

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

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

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

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

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

9 (8) to pay damages for wrongful incarceration
10 as provided in Section 1 of this 2011 act;

11 [~~8~~] (9) to insure or provide certificates of
12 coverage to school bus contractors and their employees,
13 notwithstanding the provisions of Subsection F of Section
14 41-4-3 NMSA 1978, for any comparable risk for which immunity
15 has been waived for public employees pursuant to Section 41-4-5
16 NMSA 1978, if the coverage is commercially unavailable; except
17 that coverage for exposure created by Sections 41-4-9, 41-4-10
18 and 41-4-12 NMSA 1978 shall be provided to its member public
19 school districts and [~~participating~~] other participating
20 educational entities of the public school insurance authority,
21 by the authority, and except that coverage shall be provided to
22 a contractor and [~~his~~] the contractor's employees only through
23 the public school insurance authority or its successor, unless
24 the district to which the contractor provides services has been
25 granted a waiver by the authority or the authority is not

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1 offering the coverage for the fiscal year for which the
2 division offers its coverage. A local school district to which
3 the division may provide coverage may provide for marketing and
4 servicing to be done by licensed insurance agents who shall
5 receive reasonable compensation for their services; and

6 ~~[(9)]~~ (10) to insure or provide certificates
7 of coverage for any ancillary coverage typically found in
8 commercially available liability policies provided to
9 governmental entities, if the coverage is commercially
10 unavailable.

11 C. No settlement of any claim covered by the public
12 liability fund in excess of twenty-five thousand dollars
13 (\$25,000) shall be made unless the settlement has first been
14 approved in writing by the director of the risk management
15 division of the general services department. This subsection
16 shall not be construed to limit the authority of an insurance
17 carrier, covering any liability under the Tort Claims Act, to
18 compromise, adjust and settle claims against governmental
19 entities or their public employees.

20 D. Claims against the public liability fund shall
21 be made in accordance with rules or regulations of the director
22 of the risk management division of the general services
23 department. If the director of the risk management division
24 has reason to believe that the fund would be exhausted by
25 payment of all claims allowed during a particular state fiscal

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1 year, pursuant to regulations of the risk management division,
2 the amounts paid to each claimant and other parties obtaining
3 judgments shall be prorated, with each party receiving an
4 amount equal to the percentage [~~his~~] the party's own payment
5 bears to the total of claims or judgments outstanding and
6 payable from the fund. Any amounts due and unpaid as a result
7 of such proration shall be paid in the following fiscal years."

8 SECTION 3. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2011.