

LFC Requester:	Simon
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 19, 2024
Bill No: SB115

Sponsor: Bill Tallman
Risk Management Insurance
Short Coverage Limits
Title: _____

Agency Name and Code General Services Department - 350
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Senate bill 115 (SB 115) amends §§15-7-3, NMSA 1978, and significantly impacts the statutory framework and authority of the General Services Department’s Risk Management Division (RMD). The bill would implement a new scheme of authority as to coverage and the application of statutory limitations and caps on coverage. Additionally, SB 115 requires the Department of Finance and Administration to give written approval in advance for certain settlements and thus intrudes upon the legal discretion and authority of RMD and the DMD Director. The bill also creates a new reporting requirement for RMD, mandating that certain settlements be reported on an ongoing basis to the Legislative Finance Committee.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

- This bill significantly limits the statutory and practical legal powers and operations of RMD to manage claims and suits by interposing DFA into case settlement processes. The introduction of a non-legal review of settlements has some fiscal appeal on first review, but deeper analysis reveals greater not lesser conflicts in the management of public risks.
- These conflicts include: RMDs ability to handle claims in the civil litigation process would be impaired because RMD would be limited in its ability to secure settlement authority in a timely and assured manner which in turn would compromise the ability to engage in settlement negotiations in good faith. Delays in settlement or impingement on good faith are also risks that could arouse sanctions and expense for the state.
- The independence of RMD director is built into the current statutory scheme of §15-7-9, NMSA 1978, and §14-4-23, NMSA 1978, and this bill would compromise that independence by requiring DFA approval in a wide arena of claims. DFA has considerable expertise but it lacks the statutory mandate, expertise and ability to manage risk claims and lawsuits and/or to make appropriate litigation defense decisions, which RMD is structured to provide.
- The bill conflicts with numerous other statutes that set caps and limits on liability recovery including TCA, NMCRA, IPRA, NMWPA, NMHRA, NMFPWA

- The new proposed coverage limits would require new or additional assessments on State Agencies. These state agencies would also have to adjust their budget projections accordingly.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

This bill presents the possibility of significant inter-governmental/departmental tension or conflict in the resolution of risk for the State. This inter-governmental/departmental tension or conflict would amount to added “unnecessary risk” for the State; and additional study of the assumptions and processes that guide this proposed bill are recommended.

ALTERNATIVES

A resolution proposing an interdepartmental study (GSD and DFA) on risk management, preserving the authority of each Department (and specifically the authority of RMD of GSD to manage claims and litigation in a manner that creates no “new risks” or “unnecessary risks”) would be one alternative.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo and the risk management authority of the State of New Mexico to settle and compromise claims and lawsuits against the state and its employees and officers, etc., would not be disturbed.

AMENDMENTS