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FISCAL IMPACT REPORT

SPONSOR	<u>Woods/Ramos/Tobiassen</u>	LAST UPDATED	<u>3/19/2025</u>
		ORIGINAL DATE	<u>2/04/2025</u>
SHORT TITLE	<u>Publication of Legal Settlement Terms</u>	BILL NUMBER	<u>Senate Bill 220/ aSJC/aSFC/aSFI#1/ aSFI#2</u>
		ANALYST	<u>Fischer/Simon</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
GSD Risk Management Division's Public Liability Fund	\$0.0	Up to \$300.0	Up to \$300.0	Up to \$600.0	Recurring	Other state funds

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

LFC Program Evaluation “*Major Funds of the Risk Management Division,*” September 2023

Agency Analysis Received From

Public Schools Insurance Authority (NMPSIA)

General Services Department (GSD)

Department of Information Technology (DoIT)

State Ethics Commission (SEC)

Department of Health (DOH)

Children, Youth and Families Department (CYFD)

University of New Mexico (UNM)

SUMMARY

Synopsis of Senate Floor Amendments #1 and #2 to Senate Bill 220

The Senate floor amendments to Senate Bill 220 (SB220) struck the Senate Finance Committee amendment and added requirements for settlements against public schools to be posted to the Sunshine Portal along with settlements against state agencies.

Synopsis of SFC Amendment to Senate Bill 220

The Senate Finance Committee amendment to Senate Bill 220 (SB220) increases the threshold before which a loss prevention review team must be appointed from \$250 thousand to \$1 million. The amendment also specifies that risk management review teams are not required for claims that are not pending before a court.

Synopsis of SJC Amendment to Senate Bill 220

The Senate Judiciary Committee amendment to Senate Bill 220 (SB220) struck the second instance of “a” and inserted in lieu thereof “that” and after “agency,” insert “with or.” The amendment extends the Sunshine Portal posting requirement for all state agency settlements, not just those made without the assistance of the Risk Management Division.

Synopsis of Original Bill

Senate Bill 220 (SB220) is an LFC-endorsed bill that provides for new transparency and loss prevention actions by state agencies. The bill requires state agencies that settle claims without the assistance of the Risk Management Division (RMD) to post the terms of those settlements to the Sunshine Portal within 30 days of the agreement. SB220 also creates new sections of the Risk Management Division statute Section 15-7 NMSA, which requires RMD to appoint a loss prevention review team when a death, serious injury, or substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency. The changes in SB220 were recommendations of a 2023 LFC program evaluation, *“Major Funds of the Risk Management Division.”*

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

Large settlements from a few agencies, notably the Children, Youth and Families Department, have driven significant losses for the state’s self-insured public liability fund. As of the end of FY24, the public liability fund only held enough cash to cover 16 percent, or \$145 million short, of anticipated liabilities. For FY26, RMD requested significant rate increases for participants in the fund, but there is little proactive movement to address the root causes of these losses and change agency practices to prevent similar losses in the future.

Analysis from the General Services Department (GSD) notes that contracting with independent experts and consultants can lead to additional costs. In analysis from an earlier version of the bill (which required loss prevention review teams for cases with a loss of more than \$250 thousand), the department noted each expert can cost upwards of \$5,000 per case. However, more complex cases involving larger losses could be more expensive. The estimated additional operating budget impact assumes a cost of up to \$50 thousand per claim and an estimate of three to six claims per year. The estimated number of claims is based on [recent settlement history](#), aggregated by LFC based on data from the Sunshine Portal. That data shows no settlements over \$1 million in FY22, six settlements in FY23, three settlements in FY24 and six settlements so far in FY25.

Regarding the provision to post settlement details to the Sunshine Portal, the Department of Information Technology (DoIT) notes that this would need to be continued to be done via RMD. Otherwise, providing agencies access to the portal would cost approximately \$190 each.

SIGNIFICANT ISSUES

RMD has voluntarily posted most settlement information to the Sunshine Portal since August 2019. In late 2023, the division began posting all settlement information, including settlements involving minor children and diminished-capacity individuals. However, agencies that do not opt to use RMD legal representation can and have been able to avoid posting the amounts and terms of their settlements.

SB220 also codifies a review process and reporting to take place after a state agency is alleged in a death, serious injury, or other substantial loss. Substantial loss is defined as a loss of over \$250 thousand, or a lesser amount, as determined by the RMD director. In FY24, RMD entered into 38 settlement agreements for over \$250 thousand.

Under rule (New Mexico Administrative Code 1.6.4.11), New Mexico agencies should establish and implement procedures for investigating, analyzing, and evaluating incidents and losses. Still, agencies are not required to document that they actually perform these post hoc evaluations, and no authority is given to RMD to ensure that agencies are performing these reviews. SB220 codifies that agencies are required to notify RMD immediately after becoming aware of an individual's death, serious injury, or other substantial loss alleged or suspected to be caused at least in part by the actions of a state agency. After the notification, RMD would appoint a loss prevention review team, led by an RMD-appointed attorney, to review the loss and its circumstances. The need for an attorney as the lead is to preserve the state-attorney client privilege such that confidential investigative materials produced during the investigation would not be public and potentially increase the state's liability. However, the General Services Department notes that such reports may affect any claims brought in future litigation after the investigation.

The team must produce a written report of its findings and recommendations to address and mitigate the risks of similar future losses. The report must also include a written response from the head of the associated state agency. Finally, RMD is directed to provide a report of the loss prevention reviews conducted in the past fiscal year to the Legislature.

The changes in SB220 align with a statute from Washington state that mandates the creation of a loss prevention review team when a death, serious injury, or other substantial loss is alleged or suspected to be caused, at least in part, by the actions of a state agency. That loss prevention team is also directed in statute to submit a report in writing to the risk director and the head of the state agency involved in the loss or risk of loss.

DoIT notes that cybersecurity incidents are on the rise and increasingly costly for state agencies, and some large incidents could be considered "substantial losses," necessitating expert contractors for an RMD investigation. Further, such investigations could be on top of those conducted by DoIT.

The State Ethics Commission notes that Section 3(A) of SB220 requires notification of RMD by the state agency, but Section 3(B) triggers "within 30 days of RMD becoming aware of such occurrence." This could create complications as "becoming aware of occurrence" is not defined. The commission suggested that the language in Sections 3(A) and 3(B) mirror each other and trigger when RMD is "notified by the state agency."

GSD indicates RMD occasionally receives claims alleging substantial loss that have no basis in law. RMD denies these claims without assigning them to outside counsel. The Senate Finance Committee amendment would have made clear that a risk management review team only needs to be assigned for substantial losses that are pending before a court, excluding these claims. However, the Senate Finance Committee amendment was removed on the Senate floor, and GSD remains concerned the language in SB220 would require the agency to take on additional work and expense to assign counsel in every occurrence of an individual's death or serious injury or other substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency.

NMPSIA also noted that in certain situations, settlements on claims with little or no merit are resolved on the basis of "nuisance value" or the cost of defending the litigation to a dispositive motion. The downside of publishing nuisance value settlements is that it may encourage additional claims, with attorneys knowing that something will eventually be paid regardless of the merit of the case. To avoid this situation, NMPSIA suggested that it could be worthwhile to consider an amount that must be reported, such as over \$100 thousand, rather than reporting every settlement to the Sunshine Portal.

TECHNICAL ISSUES

The Department of Information Technology notes that SB220 would create a new provision in the law that would say, "Any interviews, transcripts, reports, recommendations, communications or other documents adduced or created in connection with a loss review investigation shall remain confidential until after final disposition of any related claims pursuant to Section 15-7-9 NMSA 1978." However, Section 15-7-9 NMSA 1978 provides protections for records but does not provide confidentiality for communications not contained in a record.

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