LFC HEARING BRIEF

AGENCIES: General Services Department, New Mexico Public Schools Insurance Authority, Albuquerque Public Schools

DATE: August 20, 2015

PURPOSE OF HEARING: Review of public risk management programs

WITNESS: AJ Forte, Director, Risk Management Division, GSD, Sammy Quintana, Director, New Mexico Public School Insurance Authority, Kenneth McGuire, Director, Risk Management, APS, (invited Ed Burckle, Secretary, GSD)

PREPARED BY: Anne Hanika-Ortiz, LFC analyst

EXPECTED OUTCOME: Informational

Consultants recommend strategies to protect the state from loss. The risk program directors review these strategies, look at funding requirements, and make recommendations to their respective boards regarding insurance policies, professional services contracts, rules and regulations, and Certificates of coverage.

In addition to the General Services Department (GSD), New Mexico Public School Insurance Authority (NMPSIA) and Albuquerque Public Schools (APS), eight other governmental entities provide insurance coverage on behalf of cities, counties, and municipalities. All have workers' compensation to cover occupational injuries and most have similar exposures for property and liability losses. Each has a different funding mechanism to protect against the risk of loss as a result of these exposures.

BACKGROUND INFORMATION

GSD, NMPSIA and APS administer self-insurance plans for property, public liability and workers' compensation exposure on behalf of state agencies, local public bodies, school districts, and other educational entities. Each year, combined spending is close to $200 million with about half that amount paid out in settlements on behalf of 400 insured public entities.

RISK MANAGEMENT PROGRAMS

Risk Management Division. The Risk Management Advisory Board meets twice yearly and reviews risk policies, contracts, rules and regulations, and certificates of coverage for the Risk Management Division (RMD) director.

RMD sets insurance premiums to reflect an agency's five year loss history and exposure to future losses with regards to a particular line of coverage. The program self-insures all liability claims and recently eliminated a layer of reinsurance for claims between $5 million and $10 million, saving $600 thousand annually. For property, the program self-insures up to $500 thousand per event and purchases excess coverage for claims above that amount at a cost of $3.6 million annually. In the past, not all insured entities provided RMD accurate information by means of annual exposure surveys which over time had produced inaccurate premiums. In FY15, however, 99 percent of insured entities completed their exposure surveys and RMD began loss prevention audits with penalties for failing or refusing to participate.

Legislative Appropriations to the RMD for Workers' Compensation, Liability and Property Coverage
(in thousands)

FY12	FY13	FY14	FY15	FY16	5-Year Change
$70,654	$69,604	$62,393	$79,692	$80,125	**13%**

Source: LFC files

Payments from the RMD Risk Funds
(in thousands)

Coverage	FY11	FY12	FY13	FY14	FY15	5-Year Change
Workers' Comp	$17,746	$19,385	$18,378	$16,385	$18,246	**2.8%**
Property & Liability	$51,166	$42,567	$42,828	$43,344	$69,278	**35.0%**

Source: LFC files

GSD's Risk Management Advisory Board

Tom Clifford
John Franchini
Steve French
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Raul Burciaga
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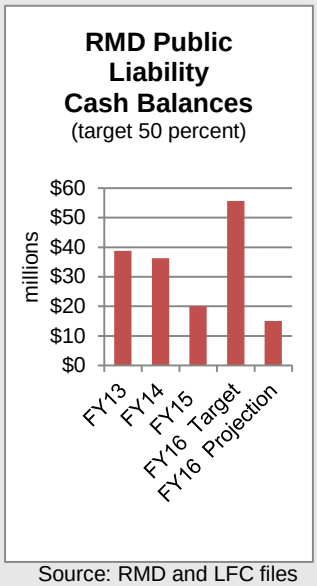
Judith Scharmer
John Wolfe

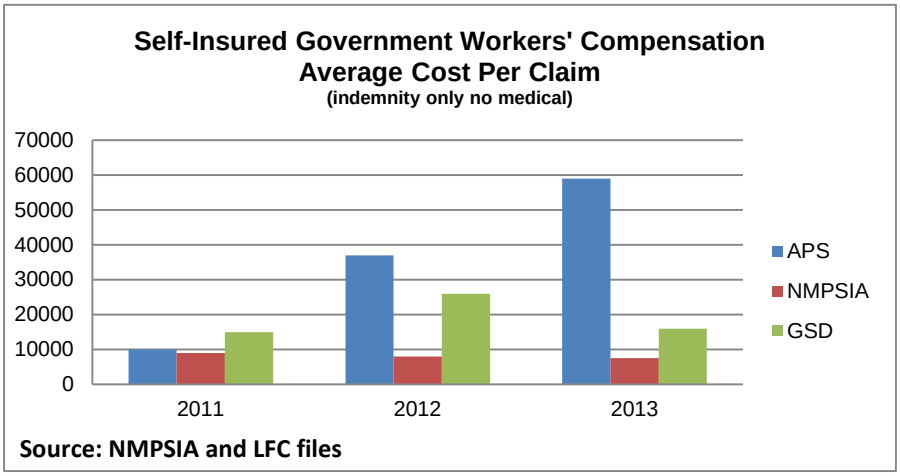
GSD reports that in the four years prior to the 2010 enactment of the Whistleblower Protection Act, the public liability fund paid on average about $7.6 million per year for defense and settlement of civil rights claims. In 2012, those costs jumped 50 percent to $11.5 million.



Source: RMD and LFC files

RMD uses a funding target of 50 percent to ensure sufficient amounts of projected assets to meet outstanding liabilities.

The upward trend in tort claims continues to diminish cash balances in the public liability fund. Overall, payments from the fund in FY15 were 60 percent higher than FY14, with medical malpractice, whistleblower, and civil rights claims driving the increases. For the Property Program, despite earlier projections that suggested costs would decline from FY14, weather-related events contributed to an increase in costs from damages to buildings and vehicles. For the Workers' Compensation Program, the number of claims decreased due to a smaller workforce but costs per claim are higher.



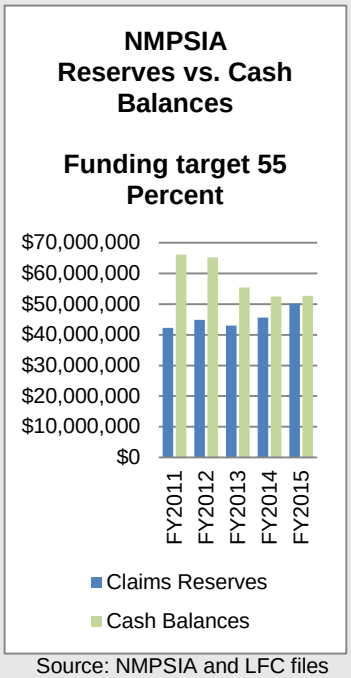
As noted above, RMD injured worker indemnity (out of work) costs were higher than NMPSIA. APS costs, however, were three to four times the cost of NMPSIA and RMD which suggests limited return-to-work programs.

Because of claim trends, RMD is providing more resources to insured agencies with the highest loss experience in terms of employment-related civil rights claims by providing more alternative dispute resolution (ADR) co-trainings with the State Personnel Office to help human resource staff make better decisions. ADR coordinators work with employees and submit mediator requests; mediators volunteer but are never asked to mediate in their own agencies. Analysis of claims data over the past five years indicates costs have grown to $20 million for employment-related civil rights claims. According to RMD, the cost avoidance value of successfully mediating these issues for FY14 was $3.2 million, based on a $45 thousand per claim cost.

Risk Rates for FY17. In July, RMD proposes risk rates which are approved by the Department of Finance and Administration and built into agency appropriation requests. The goal is to assess rates that are sufficient to cover projected losses to be paid in the new fiscal year and administrative expenses. For public liability, RMD is increasing the total premium 5 percent which will raise an additional $2.5 million and includes about $10 million for year three of a five-year plan to rebuild funds after inadequate rate setting between FY10 and FY14. For public property and workers' compensation, the total premium is flat. Rates will continue to be allocated across the shared risk pool based on claims experience and exposure.

Despite twice the exposure, NMPSIA's annual reinsurance costs of $35.4 million are 1000 percent higher than RMD's at $3.6 million (see attachment). In addition, the cost of reinsurance for NMPSIA appears to be out of proportion to losses paid over the past five years.

NMPSIA's consultant is paid a fixed fee and is also allowed to secure commissions through negotiations with excess insurance carriers up to the amount of the fixed fee. In other areas, the state has sought to eliminate these types of placement fees.



Source: NMPSIA and LFC files

Public School Insurance Authority. All K-12 school districts (except APS), charter schools, employees, volunteers, and school bus contractors are covered under policies administered by NMPSIA. The financing method used is a combination of self-insurance up to $750 thousand per event and excess insurance coverage for larger losses. In the past five years, excess insurance premiums have increased from $29 million to $35 million.

NMPSIA School Property Values
(in millions)

FY11	FY12	FY13	FY14	FY15	5-Year Change
$13,398,140	$15,139,898	$16,956,686	$18,143,654	$20,966,803	**56%**

Source: LFC files

NMPSIA's premium computation for schools is a combination of changes in exposure, such as property values and number of employees, recent loss experience, and proximity to services such as police and fire departments.

NMPSIA's Risk Program Legislative Appropriations
(in thousands)

FY12	FY13	FY14	FY15	FY16	5-Year Change
$64,065	$64,626	$66,388	$69,187	$73,829	**15%**

Source: LFC files

As noted below, NMPSIA's payments for workers' compensation losses are quite flat, and unlike state agencies, schools have not seen the same decline in workforce to explain the smaller increases. In addition, payments from the fund for property and liability losses have only increased proportionally to inflation. This suggests a successful loss prevention and control program.

Payments from the NMPSIA Risk Fund
(in thousands)

Coverage	FY11	FY12	FY13	FY14	FY15	5-Year Change
Workers' Comp	$12,232	$13,510	$12,796	$12,642	$12,321	**0.7%**
Property & Liability	$13,951	$13,538	$12,643	$17,176	$15,680	**12.4%**
Reinsurance	$29,039	$31,035	$34,593	$35,515	$35,120	**20.9%**

Source: LFC files

Reinsurance. As noted above, the cost of reinsurance is out of proportion to losses paid from the fund. In fact, the cost of reinsurance has steadily increased despite a decrease in claim costs some years. This summer, the board approved the consultant's proposal for excess coverage. The new proposal further increases the cost of reinsurance and it is not clear if alternative reinsurance options were explored. NMPSIA could reduce costs for schools by lowering excess coverage that may no longer be justified.

NMPSIA's Oversight Board

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Karen Axtell, NEA

Tim Crone, AFT

Lowell Irby, NM School Boards Association

Robert Lowery, Governor Appointee
Esther Marquez, Governor Appointees
Vacant, Governor Appointee

Chris Parrino, NM Association of School Business Officials

Millie Pogna, Public Education Commission

Katherine Ulibarri, Educational Institutions

APS's Oversight Board

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Risk Rates for FY17. NMPSIA provided estimated risk premiums for 2015-2016 for its 199 members, including several community colleges and five new charter schools. Twelve schools saw decreases between two percent and 24 percent, and 187 saw increases up to 210 percent. Las Cruces Public Schools, Santa Fe Public Schools, Gallup-McKinley County Schools, Farmington Public Schools, and Roswell Independent Schools saw the largest increases. Through public school support, NMPSIA will be requesting up to a 5 percent increase in school assessments on behalf of schools primarily for liability coverage to raise an additional $1.1 million.

Two issues impact NMPSIA claim negotiations. First, the Inspection of Public Records Act includes an exception for claims until 180 days after all litigation is exhausted. However, plaintiffs' attorneys argue the exception only applies to entities covered by RMD and some courts are supporting that argument - when this law and exception was enacted schools were under RMD. Second, school bus contractors are allowed to be covered by NMPSIA to take advantage of lower rates. However, when a claim is made involving a bus contractor there is no New Mexico Tort Cap protection because some plaintiff attorneys have successfully argued that school bus contractors are not public entities; therefore, the cap should not apply.

NMPSIA cautioned schools they anticipate K-12 litigation for concussion injuries in the coming years because of NFL/NAA settlements. According to statistics, 33 percent of high school athletes (including cheerleaders) who have a concussion report two or more the same year; 47 percent occur during football; and 90 percent do not involve a loss of consciousness. In its review, NMPSIA reported not all schools keep good records relating to immediate removal from activities after head trauma, and compliance with educational protocols for coaches and return-to-play protocols for student athletes.

Albuquerque Public Schools. APS is also self-insured for workers compensation, property and casualty exposures and carries excess insurance coverage for large claims in excess of a self-insured retention limit, the same approach as NMPSIA. Since 2012, however, the district's claims have been self-administered by their own staff. Prior to that, claims were handled by third party administrators. Except for workers' compensation, payments for property and liability losses have also increased proportionally to inflation.

LFC STAFF SUGGESTIONS FOR NEXT STEPS:

- Require disclosure of all consulting fees and commissions or require all consultant fees to be fixed and allow no commissions
- Review 10 years of loss runs based on claims paid including reinsurance payments, and reevaluate reinsurance coverage
- Eliminate excess coverage for unlikely events such as terrorism
- Deny claims for buildings and grounds not maintained properly
- Reconsider self-insured retention amounts and deductibles
- Clarify the state Whistleblower Protection Act