

AN ACT

RELATING TO THE STATE FISC; ABOLISHING THE RISK RESERVE IN THE GENERAL FUND; TRANSFERRING BALANCES FROM THE RISK RESERVE TO THE FUNDS FROM WHICH THE RISK RESERVE WAS CREATED; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. Section 10-2-16 NMSA 1978 (being Laws 1978, Chapter 132, Section 4, as amended) is amended to read:

"10-2-16. SURETY BOND FUND.--

A. There is created in the state treasury a "surety bond fund".

B. Money deposited in the surety bond fund may be expended by the department:

(1) to provide surety bond coverage;

(2) to create a retention fund to cover all or any portion of the surety bond risks of state agencies and covered educational entities;

(3) to pay claims of state agencies and covered educational entities covered by a surety bond certificate of coverage issued by the department; and

(4) to pay any costs and expenses of carrying out the provisions of this section.

C. Claims against the surety bond fund shall be made in accordance with a certificate of coverage issued by

the department to each state agency and covered educational entity. If the secretary has reason to believe that the surety bond fund would be exhausted by the payment of all claims allowed against the fund during a particular state fiscal year, the amounts paid for each claim shall be prorated with each state agency and covered educational entity receiving an amount equal to the percentage that its claims bear to the total of claims outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years.

D. The department shall collect or transfer funds from each state agency and covered educational entity to cover costs of coverage of employees of the agency as required by this section. Money collected or transferred from a state agency or covered educational entity pursuant to this subsection shall be deposited in the surety bond fund. Income from the surety bond fund shall be credited to the fund.

E. The department may provide individual surety bond coverage protecting employees who are employers or supervisors from personal losses for which they may be responsible, which losses were caused by the lack of honesty or faithful performance of employees under their supervision or control.

F. The department shall have the right to

recover from a public employee for any loss under the Surety Bond Act for which the public employee was responsible.

G. The risk management advisory board shall review:

(1) specifications for all surety bond coverage to be purchased by the department;

(2) the form and legal sufficiency of any surety bond coverage to be purchased by the department; and

(3) the form, purpose and content of any surety bond certificate of coverage to be issued by the director."

Section 2. Section 13-5-1 NMSA 1978 (being Laws 1981, Chapter 101, Section 1, as amended) is amended to read:

"13-5-1. STATE AGENCY PUBLIC PROPERTY--INSURANCE--RESERVES FOR LOSSES OF STATE AGENCIES--PUBLIC PROPERTY RESERVE FUND CREATED.--

A. The risk management division of the general services department shall purchase a blanket insurance policy for public buildings of state agencies against loss or damage by fire, windstorm, hail, smoke, explosion, riot or civil commotion. The risk management division may provide coverage to covered educational entities under the public property reserve fund through blanket or individual policies. The risk management division shall create a reserve for the uninsured value of any such public building

and for the uninsured loss or damage to any such building by flood, subject to any deductible that the risk management advisory board determines shall be borne by individual state agencies or covered educational entities.

B. Subject to any deductible to be borne by individual state agencies or covered educational entities, the risk management division of the general services department may purchase insurance, establish reserves or provide a combination of insurance and reserves to cover, in any amount not to exceed replacement cost:

(1) buildings of state agencies or covered educational entities destroyed or damaged by any peril other than a peril set forth in Subsection A of this section;

(2) personal property that is destroyed or damaged by any peril; or

(3) personal property that is stolen.

C. Any insurance purchased pursuant to Subsections A and B of this section may be purchased with such deductible provisions as may be deemed desirable by the risk management advisory board.

D. The director of the risk management division of the general services department shall include in his annual report to the legislature an inventory of all public buildings insured by the division, the estimated total value of the buildings, the total insured value of the buildings

and the amount of any deductible or maximum loss provisions in the current insurance policy covering the buildings.

E. There is created in the state treasury the "public property reserve fund". The fund shall consist of assessments of state agencies and covered educational entities deposited in the fund, money appropriated to the fund, income earned by the fund and money received as proceeds of insurance purchased pursuant to this section. The fund may be used to:

(1) purchase property insurance;

(2) pay any claim covered by a certificate of coverage issued by the director of the risk management division of the general services department; provided such claims shall only be paid to the extent of actual expenses that have been or will be incurred to repair, reconstruct and replace covered property;

(3) pay the cost of repair, reconstruction and replacement of property and expense incidental thereto arising from damage or destruction covered pursuant to this section;

(4) enter into consulting and other contracts as may be necessary or desirable in carrying out the provisions of this section; and

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

F. The director of the legislative council service may elect to cover all or any part of public buildings or property under his jurisdiction through the public property reserve fund by giving written notice of such election to the director of the risk management division of the general services department and paying assessments that the director of the risk management division prescribes.

G. For purposes of this section, "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions.

H. For the purposes of this section, "covered educational entities" means school districts as defined in Section 22-1-2 NMSA 1978 and educational institutions established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA 1978 that request and are granted coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage shall be provided to a school district only through the public school insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done

by licensed insurance agents who shall receive reasonable compensation for their services."

Section 3. Section 15-7-6 NMSA 1978 (being Laws 1977, Chapter 385, Section 9, as amended) is amended to read:

"15-7-6. WORKERS' COMPENSATION RETENTION FUND.--

A. There is created in the state treasury the "workers' compensation retention fund".

B. Money deposited in, earned by or appropriated to the workers' compensation retention fund may be used by the director to:

(1) purchase workers' compensation insurance;

(2) establish appropriate reserves to provide workers' compensation coverage for employees of state agencies or employees of covered educational entities;

(3) pay workers' compensation claims in accordance with the Workers' Compensation Act;

(4) enter into consulting and other contracts as may be necessary or desirable in carrying out the provisions of this section; and

(5) pay costs or expenses incurred in carrying out the provisions of this section.

C. For the purposes of this section, "covered educational entities" means school districts as defined in Section 22-1-2 NMSA 1978 and educational institutions

established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA 1978 that request and are granted coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage shall be provided to a school district only through the public school insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services."

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

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

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

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

(1) to purchase tort liability insurance

for state agencies and their employees and for any local public body participating in the public liability fund and its employees;

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

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

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

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

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

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

(8) to insure or provide certificates of coverage to school bus contractors and their employees,

notwithstanding Subsection F of Section 41-4-3 NMSA 1978, for any comparable risk for which immunity has been waived for public employees pursuant to Section 41-4-5 NMSA 1978, if the coverage is commercially unavailable; except that coverage for exposure created by Sections 41-4-9, 41-4-10 and 41-4-12 NMSA 1978 shall be provided to its member public school districts and participating other educational entities of the public school insurance authority, by the authority, and except that coverage shall be provided to a contractor and his employees only through the public school insurance authority or its successor, unless the district to which the contractor provides services has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services; and

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

C. No settlement of any claim covered by the public liability fund in excess of five thousand dollars

(\$5,000) shall be made unless the settlement has first been approved in writing by the director of the risk management division of the general services department. This subsection shall not be construed to limit the authority of an insurance carrier, covering any liability under the Tort Claims Act, to compromise, adjust and settle claims against governmental entities or their public employees.

D. Claims against the public liability fund shall be made in accordance with rules or regulations of the director of the risk management division of the general services department. If the director of the risk management division has reason to believe that the fund would be exhausted by payment of all claims allowed during a particular state fiscal year, pursuant to regulations of the risk management division, the amounts paid to each claimant and other parties obtaining judgments shall be prorated, with each party receiving an amount equal to the percentage his own payment bears to the total of claims or judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years."

Section 5. Section 51-1-45 NMSA 1978 (being Laws 1977, Chapter 227, Section 7, as amended) is amended to read:

"51-1-45. STATE GOVERNMENT UNEMPLOYMENT COMPENSATION RESERVE FUND CREATED--PURPOSES--ASSESSMENTS.--

A. There is created a "state government unemployment compensation reserve fund". The fund and any income from the fund shall be held in trust, deposited in a segregated account and invested by the director of the risk management division of the general services department with the prior approval of the state board of finance. Money in the fund is appropriated to carry out the purposes of the fund.

B. The director of the risk management division of the general services department shall assess each state agency at the end of each calendar quarter in accordance with the rate schedule prescribed by the risk management division plus an additional amount to pay reasonable costs of administration of the fund. Assessments shall be deposited in the state government unemployment compensation reserve fund to carry out the purposes of Laws 1977, Chapter 227, as amended. The director of the risk management division shall approve the method of computing the amounts that are payable under this subsection by each state agency and the time and manner of payments.

C. Money deposited in the state government unemployment compensation reserve fund may be used by the director of the risk management division of the general services department to:

- (1) pay the department for benefits paid to

employees of state agencies;

(2) pay costs or expenses incurred in protesting benefits paid by the department;

(3) pay other costs incurred in carrying out the provisions of this section; and

(4) establish and maintain a reserve fund for paying reimbursements of benefits paid to employees of state agencies."

Section 6. TEMPORARY PROVISION--FUND TRANSFER.--On the effective date of this act, the balance of each risk reserve account shall be transferred to the appropriate fund for which the account is kept.

Section 7. REPEAL.--Section 6-4-2.4 NMSA 1978 (being Laws 1996 (S.S.), Chapter 3, Section 1) is repealed.

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
