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HOUSE BILL 501

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Donald E. Bratton

AN ACT

**RELATING TO THE PUBLIC LIABILITY FUND; AMENDING SECTION
41-4-23 NMSA 1978 (BEING LAWS 1977, CHAPTER 386, SECTION 17,
AS AMENDED) TO RAISE THE SETTLEMENT AMOUNT THAT CAN BE MADE
BEFORE FIRST BEING APPROVED BY THE DIRECTOR OF THE RISK
MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT.**

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

**Section 1. 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.**

underscored material = new
[bracketed material] = delete

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

4 (1) to purchase tort liability insurance for
5 state agencies and their employees and for any local public
6 body participating in the public liability fund and its
7 employees;

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

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

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

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

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

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

underscored material = new
[bracketed material] = delete

1 (8) to insure or provide certificates of
2 coverage to school bus contractors and their employees,
3 notwithstanding Subsection F of Section 41-4-3 NMSA 1978, for
4 any comparable risk for which immunity has been waived for
5 public employees pursuant to Section 41-4-5 NMSA 1978, if the
6 coverage is commercially unavailable; except that coverage for
7 exposure created by Sections 41-4-9, 41-4-10 and 41-4-12 NMSA
8 1978 shall be provided to its member public school districts
9 and participating other educational entities of the public
10 school insurance authority, by the authority, and except that
11 coverage shall be provided to a contractor and his employees
12 only through the public school insurance authority or its
13 successor, unless the district to which the contractor
14 provides services has been granted a waiver by the authority
15 or the authority is not offering the coverage for the fiscal
16 year for which the division offers its coverage. A local
17 school district to which the division may provide coverage may
18 provide for marketing and servicing to be done by licensed
19 insurance agents who shall receive reasonable compensation for
20 their services; and

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

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underscored material = new
[bracketed material] = delete

1 C. No settlement of any claim covered by the
2 public liability fund in excess of [~~five thousand dollars~~
3 ~~(\$5,000)~~] twenty-five thousand dollars (\$25,000) shall be made
4 unless the settlement has first been approved in writing by
5 the director of the risk management division of the general
6 services department. This subsection shall not be construed
7 to limit the authority of an insurance carrier, covering any
8 liability under the Tort Claims Act, to compromise, adjust and
9 settle claims against governmental entities or their public
10 employees.

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