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SENATE BILL 289

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

INTRODUCED BY

Roman M. Maes III

AN ACT

RELATING TO INSURANCE; AUTHORIZING OWNER-CONTROLLED AND  
PROCURED INSURANCE ON CERTAIN STATE CONSTRUCTION PROJECTS;  
INCREASING THE RISK MANAGEMENT DIVISION'S AUTHORITY FOR  
SETTLEMENT OF PUBLIC LIABILITY FUND CLAIMS.

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]

AUTHORIZED EXPENDITURES. --

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

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1 of finance.

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

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

9 (2) to contract with one or more consulting or  
10 claims adjusting firms pursuant to the provisions of Section  
11 41-4-24 NMSA 1978;

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

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

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

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

25 (7) to create a retention fund for any risk

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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

1       unavailable; and

2                               (10) to purchase insurance coverage for all  
3       risks of the state or a state agency as owner and all risks of  
4       all contractors and subcontractors that have contractual  
5       responsibilities pursuant to a major construction project.

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

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

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1 fund. Any amounts due and unpaid as a result of such proration  
2 shall be paid in the following fiscal years. "

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