

LFC Requestor: Self Assigned

2025 LEGISLATIVE SESSION  
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate  
Number: SB220

Category: Bill  
Type: Introduced

Date (of THIS analysis): 2/3/2025

Sponsor(s): Pat Woods and Gabriel Ramos

Short Title: Publication of Legal Settlement Terms

Reviewing Agency: Agency 665 - Department of Health

Analysis Contact Person: Arya Lamb

Phone Number: 505-470-4141

e-Mail: Arya.Lamb@doh.nm.gov

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

### Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

### Section IV: Narrative

#### 1. BILL SUMMARY

##### a) Synopsis

Senate Bill 220 (SB220) proposes to amend the Sunshine Portal Transparency Act to require that all state agencies that settle a “potential legal or other claim” against the agency “without the assistance of the risk management division of the general services department” upload the settlement agreement into the Sunshine Portal for free public access.

SB220 would also amend the Risk Management Division’s (RMD’s) authorizing statute (Chapter 15, Article 7) to require that state agencies notify RMD immediately upon becoming aware of the death, serious injury, or substantial loss (defined as a loss possibly totaling more than \$250,000) incurred by an individual, which is alleged or is suspected to be caused in part by the actions of a state agency. RMD would then be required to form a “loss prevention review team” to review the death, serious injury, or substantial loss, generate a report, and submit the report to the head of the affected agency. The purpose of the report would be to evaluate causes of the incident and recommend steps to reduce the risk of such incidents happening in the future. Agencies would be required to provide access to RMD’s loss prevention review team to all relevant documents in the agency’s possession. RMD would be required to submit a report to the Legislature identifying the loss prevention reviews conducted in the past fiscal year, summarizing determinations, and providing additional data.

Is this an amendment or substitution?  Yes  No

Is there an emergency clause?  Yes  No

##### b) Significant Issues

SB220 poses various issues for state agencies and may have the unintended consequence of generating greater liability for state government. By requiring that settlement

agreements be posted on the Sunshine Portal, the bill could lead to “copycat” litigation from other potential plaintiffs who, having viewed previous settlements entered by the agency, may believe that they can extract similar or greater concessions.

SB220 contains certain ambiguous expressions. The bill refers to “potential legal or other claim[s]”; it is unclear what would constitute a non-legal claim, although agencies would be required to post settlements concerning such claims on the Sunshine Portal. The bill would require that settlements entered “without the assistance of risk management division” of GSD be posted to the Sunshine Portal. Presumably this refers to settlements in non-tort cases, such as administrative hearings, employment cases, etc., but this is unclear.

SB220 would require that state agencies notify RMD immediately upon becoming aware of a death, serious injury, or other substantial loss that is alleged or suspected to be caused in part by the actions of the agency. This requirement is problematic for a few reasons. First, the bill requires that agencies contact RMD only when a loss is “alleged or suspected to be caused at least in part” by the state agency. If a report is made but the loss is not “alleged” to have been the agency’s fault, then the agency’s report to RMD acts as a de facto admission of guilt: the agency wouldn’t have reported the matter to RMD unless it suspected that the injury or loss was the agency’s fault. The fact that an agency made such a report to RMD would likely be admissible in court proceedings.

A related issue, and one of the most significant problems posed by SB220, is the fact that the bill does not specify that the reports by agencies to RMD, nor the follow-up reports by RMD to agencies or to the Legislature, are confidential. The review performed by RMD would be akin to a risk analysis by an agency’s attorney, or a peer review analysis; but unlike those types of analyses, there is no clear source of confidentiality for these documents in the bill, or elsewhere in law. These materials could potentially be deemed confidential as “records pertaining to insurance coverage” under NMSA 15-7-9. However, in the context described in the bill, no claim has necessarily been made by an injured party, and the stated purpose of RMD’s report is not to address an insurance matter, but rather, to evaluate [the incident’s] causes and recommend steps to reduce the risk of such incidents occurring in the future.” Thus, it isn’t clear that these reports actually “pertain[] to insurance coverage”, as that expression is used at NMSA 15-7-9, and evidently these reports would not pertain to “claims for damages” (another basis for confidentiality in that section), since no such claims will necessarily have been made at the time the reports are generated. Likewise, it isn’t clear that these reports could be held as confidential work product or attorney-client privileged information. To the extent that the communications between state agencies and RMD are communicated to the Legislature, any such privilege would be waived. In short, it is very important that SB220 be revised to include a confidentiality provision that ensures that the reports described therein are not made subject to public disclosure via IPRA, discovery requests, or other means.

SB220 would require that RMD expend significant resources in conducting loss prevention reviews. The bill would require that RMD convene a review team to investigate causes of injuries, deaths, and losses in every instance in which a state agency is alleged or suspected] to be at fault. In contrast, the current state tort system relies upon tort claims notices filed by an affected person, the receipt of which then initiates RMD’s review. Upon information and belief, this system has proven to be effective and is far less burdensome for RMD and for the state agencies than the process described in SB220.

## 2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes  No

SB220 would require that NMDOH post all settlement agreements not generated with the assistance of RMD be posted on the Sunshine Portal and would also require that NMDOH notify RMD whenever a death, serious injury, or other substantial loss occurs, which is alleged to be or suspected to have been caused by the agency.

- Is this proposal related to the NMDOH Strategic Plan?  Yes  No

**Goal 1:** We expand equitable access to services for all New Mexicans

**Goal 2:** We ensure safety in New Mexico healthcare environments

**Goal 3:** We improve health status for all New Mexicans

**Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

## 3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

Yes  No  N/A

- If there is an appropriation, is it included in the LFC Budget Request?

Yes  No  N/A

- Does this bill have a fiscal impact on NMDOH?  Yes  No

SB220 poses a significant potential for increased civil liability on the part of NMDOH and all other state agencies. The bill could encourage additional litigation by requiring that state agencies broadcast the terms of settlement agreements on the Sunshine Portal. The bill would also require that NMDOH and other state agencies report to RMD whenever a death, serious injury, or substantial loss is alleged or suspected to be caused by the agency. The bill does not make the reports to RMD by the agency, or the reports by RMD to the agency or the Legislature, confidential. Allowing such reports to be made public would generate significant liability for NMDOH and for all state agencies.

## 4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH?  Yes  No

See “Significant Issues”, above.

## 5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None.

**6. TECHNICAL ISSUES**

Are there technical issues with the bill?  Yes  No

**7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)**

- Will administrative rules need to be updated or new rules written?  Yes  No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)?  Yes  No
- Does this bill conflict with federal grant requirements or associated regulations?  
 Yes  No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs?  Yes  No

**8. DISPARITIES ISSUES**

None.

**9. HEALTH IMPACT(S)**

None.

**10. ALTERNATIVES**

None.

**11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

If SB220 is not enacted, the Sunshine Portal Transparency Act will not be amended to require that settlement agreements entered without the assistance of RMD be posted on the Sunshine Portal; and RMD’s authorizing statute at Chapter 15, Article 7 NMSA will not be amended to require that state agencies notify RMD of every instance of a death, serious injury, or substantial loss that is alleged or suspected to be caused by the agency.

**12. AMENDMENTS**

NMDOH recommends that the bill be amended to include a confidentiality provision that renders all the reports described in the bill, that are made by state agencies to RMD, or by RMD to state agencies or the Legislature, be held as confidential and not be made available for public dissemination.