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HOUSE BILL 157

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 200**

INTRODUCED BY

Rob Burpo

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;

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1                    ~~[(2)]~~ (3) to pay claims of state agencies  
2 and covered educational entities covered by a surety bond  
3 certificate of coverage issued by the department; and

4                    ~~[(3)]~~ (4) to pay any costs and expenses of  
5 carrying out the provisions of this section.

6                    C. Claims against the surety bond fund shall be  
7 made in accordance with a certificate of coverage issued by  
8 the department to each state agency and covered educational  
9 entity. If the secretary has reason to believe that the  
10 surety bond fund ~~[including any transfers to the surety bond~~  
11 ~~fund from the risk reserve]~~ would be exhausted by the payment  
12 of all claims allowed against the fund during a particular  
13 state fiscal year, the amounts paid for each claim shall be  
14 prorated with each state agency and covered educational  
15 entity receiving an amount equal to the percentage that its  
16 claims bear to the total of claims outstanding and payable  
17 from the fund. Any amounts due and unpaid as a result of  
18 such proration shall be paid in the following fiscal years.

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

E. The department may provide individual surety

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1 bond coverage protecting employees who are employers or  
2 supervisors from personal losses for which they may be  
3 responsible, which losses were caused by the lack of honesty  
4 or faithful performance of employees under their supervision  
5 or control.

6 F. The department shall have the right to recover  
7 from a public employee for any loss under the Surety Bond Act  
8 for which the public employee was responsible.

9 G. The risk management advisory board shall  
10 review:

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

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

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

18 ~~[H. On or before June 15 of each fiscal year, the~~  
19 ~~risk management advisory board shall calculate the current~~  
20 ~~cash balance in the surety bond fund, all revenue projected~~  
21 ~~to be deposited into the fund during the next fiscal year and~~  
22 ~~all expenditures projected to be made from the fund during~~  
23 ~~the next fiscal year. Within fifteen days of the~~  
24 ~~calculation, ninety percent of all projected excess cash~~  
25 ~~balances shall be transferred to the risk reserve. Excess~~  
~~cash balances shall be calculated as the current cash balance~~  
~~plus projected revenue minus projected expenditures.]"~~

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

3           "13-5-1. STATE AGENCY PUBLIC PROPERTY--INSURANCE--  
4 RESERVES FOR LOSSES OF STATE AGENCIES--PUBLIC PROPERTY  
5 RESERVE FUND CREATED.--

6           A. The risk management division of the general  
7 services department shall purchase a blanket insurance policy  
8 for public buildings of state agencies against loss or damage  
9 by fire, windstorm, hail, smoke, explosion, riot or civil  
10 commotion. The risk management division may provide coverage  
11 to covered educational entities under the public property  
12 reserve fund through blanket or individual policies. The  
13 risk management division shall create a reserve for the  
14 uninsured value of any such public building and for the  
15 uninsured loss or damage to any such building by flood,  
16 subject to any deductible that the risk management advisory  
17 board determines shall be borne by individual state agencies  
18 or covered educational entities.

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

25                   (1) [~~cover, in any amount not to exceed~~  
~~replacement cost~~] buildings of state agencies or covered  
educational entities destroyed or damaged by any peril other

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1 than a peril set forth in Subsection A of this section;

2 (2) ~~[cover, in any amount not to exceed~~  
3 ~~replacement cost, any]~~ personal property that is destroyed or  
4 damaged by any peril; or

5 (3) ~~[cover, in any amount not to exceed~~  
6 ~~replacement cost, any]~~ personal property ~~[which]~~ that is  
7 stolen.

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

12 D. The director of the risk management division of  
13 the general services department shall include in his annual  
14 report to the legislature an inventory of all public  
15 buildings insured by the division, the estimated total value  
16 of ~~[such]~~ the buildings, the total insured value of ~~[such]~~  
17 the buildings and the amount of any deductible or maximum  
18 loss provisions in the current insurance policy covering  
19 ~~[such]~~ the buildings.

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

The fund may be used to:

(1) purchase property insurance;

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

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

11 (4) enter into [~~such~~] consulting and other  
12 contracts as may be necessary or desirable in carrying out  
13 the provisions of this section; and

14 (5) pay [~~any~~] costs and expenses incurred in  
15 carrying out the provisions of this section.

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

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

H. For the purposes of this section, "covered  
educational entities" means school districts as defined in

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1 Section 22-1-2 NMSA 1978 and educational institutions  
2 established pursuant to Chapter 21, Articles 13, 16 and 17  
3 NMSA 1978 that request and are granted coverage from the risk  
4 management division of the general services department, if  
5 the coverage is commercially unavailable; except that  
6 coverage shall be provided to a school district only through  
7 the public school insurance authority or its successor unless  
8 the district has been granted a waiver by the authority or  
9 the authority is not offering the coverage for the fiscal  
10 year for which the division offers its coverage. A local  
11 school district to which the division may provide coverage  
12 may provide for marketing and servicing to be done by  
13 licensed insurance agents who shall receive reasonable  
14 compensation for their services.

15 ~~[F. On or before June 15 of each fiscal year, the~~  
16 ~~risk management advisory board shall calculate the current~~  
17 ~~cash balance in the public property reserve fund, all revenue~~  
18 ~~projected to be deposited into the fund during the next~~  
19 ~~fiscal year and all expenditures projected to be made from~~  
20 ~~the fund during the next fiscal year. Within fifteen days of~~  
21 ~~the calculation, ninety percent of all projected excess cash~~  
22 ~~balances shall be transferred to the risk reserve. Excess~~  
23 ~~cash balances shall be calculated as the current cash balance~~  
24 ~~plus projected revenue minus projected expenditures.]"~~  
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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.--

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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;
- ~~(2)~~ (3) pay workers' compensation claims in accordance with the Workers' Compensation Act;
- ~~(3)~~ (4) enter into consulting and other contracts as may be necessary or desirable in carrying out the provisions of this section; and
- ~~(4)~~ (5) pay ~~any~~ 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

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1 the authority is not offering the coverage for the fiscal  
2 year for which the division offers its coverage. A local  
3 school district to which the division may provide coverage  
4 may provide for marketing and servicing to be done by  
5 licensed insurance agents who shall receive reasonable  
6 compensation for their services.

7 ~~[D. On or before June 15 of each fiscal year, the~~  
8 ~~risk management advisory board shall calculate the current~~  
9 ~~cash balance in the workers' compensation retention fund, all~~  
10 ~~revenue projected to be deposited into the fund during the~~  
11 ~~next fiscal year and all expenditures projected to be made~~  
12 ~~from the fund during the next fiscal year. Within fifteen~~  
13 ~~days of the calculation, ninety percent of all projected~~  
14 ~~excess cash balances shall be transferred to the risk~~  
15 ~~reserve. Excess cash balances shall be calculated as the~~  
16 ~~current cash balance plus projected revenue minus projected~~  
17 ~~expenditures.]"~~

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

20 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

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

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

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1 general services department:

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

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

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

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

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

21 (6) to pay ~~[any]~~ costs and expenses incurred  
22 in carrying out the provisions of this section;

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

25 ~~[+7]~~ (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

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

18                   ~~[+8)]~~ (9) to insure or provide certificates  
19 of coverage for any ancillary coverage typically found in  
20 commercially available liability policies provided to  
21 governmental entities, if the coverage is commercially  
22 unavailable.

23                   C. No settlement of any claim covered by the  
24 public liability fund in excess of five thousand dollars  
25 (\$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

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1 shall not be construed to limit the authority of an insurance  
2 carrier, covering any liability under the Tort Claims Act, to  
3 compromise, adjust and settle claims against governmental  
4 entities or their public employees.

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

20 ~~[E. On or before June 15 of each fiscal year, the~~  
21 ~~risk management advisory board shall calculate the current~~  
22 ~~cash balance in the public liability fund, all revenue~~  
23 ~~projected to be deposited into the fund during the next~~  
24 ~~fiscal year and all expenditures projected to be made from~~  
25 ~~the fund during the next fiscal year. Within fifteen days of~~  
~~the calculation, ninety percent of all projected excess cash~~  
~~balances shall be transferred to the risk reserve. Excess~~

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1 ~~cash balances shall be calculated as the current cash balance~~  
2 ~~plus projected revenue minus projected expenditures.]"~~

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

5 "51-1-45. STATE GOVERNMENT UNEMPLOYMENT COMPENSATION  
6 RESERVE FUND CREATED--PURPOSES--ASSESSMENTS.--

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

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

C. Money deposited in the state government

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1 unemployment compensation reserve fund may be used by the  
2 director of the risk management division of the general  
3 services department to:

4 (1) pay the department for benefits paid to  
5 employees of state agencies;

6 (2) pay ~~[any]~~ costs or expenses incurred in  
7 protesting benefits paid by the department; ~~[and]~~

8 (3) pay ~~[any]~~ other costs incurred in  
9 carrying out the provisions of this section;

10 ~~[D. On or before June 15 of each fiscal year, the~~  
11 ~~risk management advisory board shall calculate the current~~  
12 ~~cash balance in the state government unemployment~~  
13 ~~compensation reserve fund, all revenue projected to be~~  
14 ~~deposited into the fund during the next fiscal year and all~~  
15 ~~expenditures projected to be made from the fund during the~~  
16 ~~next fiscal year. Within fifteen days of the calculation,~~  
17 ~~ninety percent of all projected excess cash balances shall be~~  
18 ~~transferred to the risk reserve. Excess cash balances shall~~  
19 ~~be calculated as the current cash balance plus projected~~  
20 ~~revenue minus projected expenditures] and~~

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

24 Section 6. TEMPORARY PROVISION--FUND TRANSFER.--On the  
25 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.

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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.