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SENATE BILL 152

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY  
Sue F. Wilson

AN ACT

RELATING TO GOVERNMENTAL LIABILITY; EXPANDING THE DUTIES OF  
THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES  
DEPARTMENT TO REQUIRE THE PURCHASE OF INSURANCE COVERAGE FOR  
FOSTER PARENTS; CHANGING THE TORT CLAIMS ACT DEFINITION TO  
MAKE THE LAW CONSISTENT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 15-7-3 NMSA 1978 (being Laws 1978,  
Chapter 166, Section 8, as amended) is amended to read:

"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK  
MANAGEMENT DIVISION.--

A. The risk management division of the general  
services department may:

(1) enter into contracts;

(2) procure insurance, reinsurance or  
employee group benefits; provided that any proposal or

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1 contract for the procurement of any group health care  
2 benefits shall be subject to the provisions of the Health  
3 Care Purchasing Act; and provided further that reinsurance or  
4 excess coverage insurance may be placed by private  
5 negotiation, notwithstanding the provisions of the  
6 Procurement Code, if the insurance or reinsurance has a  
7 restricted number of interested carriers, the board  
8 determines that the coverage is in the interest of the state  
9 and cannot otherwise be procured for a reasonable cost and  
10 the director seeks the advice and review of the board in the  
11 placement and in designing private negotiation procedures;

12 (3) in the manner prescribed by Subsection E  
13 of Section 9-17-5 NMSA 1978, after a notice and a public  
14 hearing, prescribe by regulation reasonable and objective  
15 underwriting and safety standards for governmental entities  
16 and reasonable standards for municipal self-insurance pooling  
17 agreements covering liability under the Tort Claims Act and  
18 adopt such other regulations as may be deemed necessary;

19 (4) compromise, adjust, settle and pay  
20 claims;

21 (5) pay expenses and costs;

22 (6) in the manner prescribed by Subsection E  
23 of Section 9-17-5 NMSA 1978, prescribe by rule or regulation  
24 the rating bases, assessments, penalties and risks to be  
25 covered by the public liability fund, the workers'  
compensation retention fund and the public property reserve  
fund and the extent such risks are to be covered;

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1 (7) issue certificates of coverage in  
2 accordance with Paragraph (6) of this subsection:

3 (a) to any governmental entity for any  
4 tort liability risk covered by the public liability fund;

5 (b) to any governmental entity for any  
6 personal injury liability risk or for the defense of any  
7 errors or act or omission or neglect or breach of duty,  
8 including the risks set forth in Paragraph (2) of Subsection  
9 B and Paragraph (2) of Subsection D of Section 41-4-4 NMSA  
10 1978; and

11 (c) to any governmental entity for any  
12 part of risk covered by the workers' compensation retention  
13 fund, the surety bond fund or the public property reserve  
14 fund;

15 (8) study the risks of all governmental  
16 entities;

17 (9) initiate the establishment of safety  
18 programs and adopt regulations to carry out such programs in  
19 the manner prescribed by Subsection E of Section 9-17-5 NMSA  
20 1978;

21 (10) hire a safety program director who  
22 shall coordinate all safety programs of all state agencies;

23 (11) consult with and advise local public  
24 bodies on their risk management problems; and

25 (12) employ full-time legal counsel who  
shall be under the exclusive control and supervision of the  
director and the secretary of general services.

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1           B. The risk management division of the general  
2 services department shall provide liability coverage for the  
3 following risks:

4                   (1) a claim made pursuant to the provisions  
5 of 42 U.S.C. Section 1983 against a nonprofit corporation,  
6 members of its board of directors or its employees when the  
7 claim is based upon action taken pursuant to the provisions  
8 of a contract between the corporation and the department of  
9 health under which the corporation provides developmental  
10 disability services to clients of the department and the  
11 claim is made by or on behalf of a client; and

12                   (2) a claim made pursuant to the provisions  
13 of 42 U.S.C. Section 1983 against a nonprofit corporation,  
14 members of its board of directors or its employees when the  
15 corporation operates a facility licensed by the department of  
16 health as an intermediate care facility for the mentally  
17 retarded and the claim is based upon action taken pursuant to  
18 the provisions of the license and is made by or on behalf of  
19 a resident of the licensed facility.

20           C. The director shall report his findings and  
21 recommendations, if any, for the consideration of each  
22 legislature. The report shall include the amount and name of  
23 any person receiving payment from the public liability fund  
24 of any claim paid during the previous fiscal year exceeding  
25 one thousand dollars (\$1,000). The report shall be made  
available to the legislature on or before December 15  
preceding each regular legislative session.

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1                   D. The director shall purchase insurance coverage  
2 for licensed foster parents providing care for children in  
3 the legal custody of the human services department, the  
4 corrections department, the department of health or the  
5 children, youth and families department, but excluding those  
6 foster parents certified by a licensed child placement  
7 agency. The insurance shall insure against the risks of  
8 liability for bodily injury and property damage arising from  
9 civil rights violations or negligence resulting from  
10 activities related to the care and physical custody of foster  
11 children. Limits of liability shall not be less than one  
12 hundred thousand dollars (\$100,000) per occurrence. Premium  
13 costs shall be allocated to and paid by the departments  
14 having legal custody of the foster children and contracts  
15 with foster parents to care for them. Coverage shall be  
16 effective from January 1, 2001. If the director and the  
17 board determine that coverage is not available, the  
18 departments shall be notified of that determination no later  
19 than December 1, 2000. If coverage is determined not to be  
20 available, a foster parent who purchases liability insurance  
21 covering the risks enumerated in this section with at least  
22 the specified limits shall be reimbursed by the department  
23 with which the foster parent has contracted to provide care  
24 for the cost of the premium incurred for the described  
25 coverage and minimum limit upon presenting proof of purchase  
to the department."

Section 2. Section 41-4-3 NMSA 1978 (being Laws 1976,

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1 Chapter 58, Section 3, as amended) is amended to read:

2 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

3 A. "board" means the risk management advisory  
4 board;

5 B. "governmental entity" means the state or any  
6 local public body as defined in Subsections C and H of this  
7 section;

8 C. "local public body" means all political  
9 subdivisions of the state and their agencies,  
10 instrumentalities and institutions and all water and natural  
11 gas associations organized pursuant to Chapter 3, Article 28  
12 NMSA 1978;

13 D. "law enforcement officer" means any full-time  
14 salaried public employee of a governmental entity whose  
15 principal duties under law are to hold in custody any person  
16 accused of a criminal offense, to maintain public order or to  
17 make arrests for crimes, or members of the national guard  
18 when called to active duty by the governor;

19 E. "maintenance" does not include:

20 (1) conduct involved in the issuance of a  
21 permit, driver's license or other official authorization to  
22 use the roads or highways of the state in a particular  
23 manner; or

24 (2) an activity or event relating to a  
25 public building or public housing project that was not  
foreseeable;

F. "public employee" means any officer, employee

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1 or servant of a governmental entity, excluding independent  
2 contractors except for individuals defined in Paragraphs  
3 [~~(7), (8), (10) and (14)~~] (6), (9) and (13) of this  
4 subsection, or of a corporation organized pursuant to the  
5 Educational Assistance Act or the Mortgage Finance Authority  
6 Act and including:

7 (1) elected or appointed officials;

8 (2) law enforcement officers;

9 (3) persons acting on behalf or in service  
10 of a governmental entity in any official capacity, whether  
11 with or without compensation;

12 [~~(4) licensed foster parents providing care~~  
13 ~~for children in the custody of the human services department,~~  
14 ~~corrections department or department of health, but not~~  
15 ~~including foster parents certified by a licensed child~~  
16 ~~placement agency;~~

17 ~~(5)]~~ (4) members of state or local selection  
18 panels established pursuant to the Adult Community  
19 Corrections Act;

20 [~~(6)]~~ (5) members of state or local  
21 selection panels established pursuant to the Juvenile  
22 Community Corrections Act;

23 [~~(7)]~~ (6) licensed medical, psychological or  
24 dental arts practitioners providing services to the  
25 corrections department pursuant to contract;

[~~(8)]~~ (7) members of the board of directors  
of the New Mexico comprehensive health insurance pool;

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1                    [~~(9)~~] (8) individuals who are members of  
2 medical review boards, committees or panels established by  
3 the educational retirement board or the retirement board of  
4 the public employees retirement association;

5                    [~~(10)~~] (9) licensed medical, psychological  
6 or dental arts practitioners providing services to the  
7 children, youth and families department pursuant to contract;

8                    [~~(11)~~] (10) members of the board of  
9 directors of the New Mexico educational assistance  
10 foundation;

11                    [~~(12)~~] (11) members of the board of  
12 directors of the New Mexico student loan corporation;

13                    [~~(13)~~] (12) members of the New Mexico  
14 mortgage finance authority; and

15                    [~~(14)~~] (13) volunteers, employees and board  
16 members of court-appointed special advocate programs;

17                    G. "scope of duties" means performing any duties  
18 that a public employee is requested, required or authorized  
19 to perform by the governmental entity, regardless of the time  
20 and place of performance; and

21                    H. "state" or "state agency" means the state of  
22 New Mexico or any of its branches, agencies, departments,  
23 boards, instrumentalities or institutions."

24                    Section 3. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2000.