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SENATE BILL 174

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO THE TORT CLAIMS ACT; CLARIFYING THE DEFINITION OF
"SCOPE OF DUTIES"; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 41-4-3 NMSA 1978 (being Laws 1976,
Chapter 58, Section 3, as amended) is amended to read:

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

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

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

C. "local public body" means ~~all~~ a political
~~subdivisions~~ subdivision of the state and ~~their~~ its
agencies, instrumentalities and institutions and ~~all~~ a water

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1 and natural gas [~~associations~~] association organized pursuant
2 to Chapter 3, Article 28 NMSA 1978;

3 D. "law enforcement officer" means any full-time
4 salaried public employee of a governmental entity whose
5 principal duties under law are to hold in custody any person
6 accused of a criminal offense, to maintain public order or to
7 make arrests for crimes, or [~~members~~] a member of the national
8 guard when called to active duty by the governor;

9 E. "maintenance" does not include:

10 (1) conduct involved in the issuance of a
11 permit, driver's license or other official authorization to
12 use the roads or highways of the state in a particular manner;
13 or

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

16 F. "public employee" means any officer, employee
17 or servant of a governmental entity, excluding independent
18 contractors except for individuals defined in Paragraphs (7),
19 (8), (10) and (14) of this subsection, or of a corporation
20 organized pursuant to the Educational Assistance Act or the
21 Mortgage Finance Authority Act and including:

- 22 (1) elected or appointed officials;
23 (2) law enforcement officers;
24 (3) persons acting on behalf or in service of
25 a governmental entity in any official capacity, whether with

1 or without compensation;

2 (4) licensed foster parents providing care
3 for children in the custody of the human services department,
4 corrections department or department of health, but not
5 including foster parents certified by a licensed child
6 placement agency;

7 (5) members of state or local selection
8 panels established pursuant to the Adult Community Corrections
9 Act;

10 (6) members of state or local selection
11 panels established pursuant to the Juvenile Community
12 Corrections Act;

13 (7) licensed medical, psychological or dental
14 arts practitioners providing services to the corrections
15 department pursuant to contract;

16 (8) members of the board of directors of the
17 New Mexico comprehensive health insurance pool;

18 (9) individuals who are members of medical
19 review boards, committees or panels established by the
20 educational retirement board or the retirement board of the
21 public employees retirement association;

22 (10) licensed medical, psychological or
23 dental arts practitioners providing services to the children,
24 youth and families department pursuant to contract;

25 (11) members of the board of directors of the

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1 New Mexico educational assistance foundation;
2 (12) members of the board of directors of the
3 New Mexico student loan guarantee corporation;

4 (13) members of the New Mexico mortgage
5 finance authority; and

6 (14) volunteers, employees and board members
7 of court-appointed special advocate programs;

8 G. "scope of duties" means ~~[performing any duties~~
9 ~~that a public employee is requested, required or authorized to~~
10 ~~perform by the governmental entity, regardless of the time and~~
11 ~~place of performance]~~ an act performed by a public employee
12 that is:

13 (1) fairly and naturally incidental to the
14 governmental entity's activities assigned to the public
15 employee;

16 (2) done while the employee is engaged in the
17 governmental entity's activities with the view of furthering
18 the governmental entity's interest and does not arise entirely
19 from some external, independent and personal motive on the
20 part of the public employee; and

21 (3) not criminal; and

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