

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 791

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO SCHOOLS; REQUIRING LIABILITY COVERAGE FOR SCHOOLS
OPEN AFTER HOURS FOR COMMUNITY USE.

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.--

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
of finance.

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

.156438.2

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

23 (8) to insure or provide certificates of
24 coverage to school bus contractors and their employees,
25 notwithstanding the provisions of Subsection F of Section

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1 41-4-3 NMSA 1978, for any comparable risk for which immunity
2 has been waived for public employees pursuant to Section 41-4-5
3 NMSA 1978, if the coverage is commercially unavailable; except
4 that coverage for exposure created by Sections 41-4-9, 41-4-10
5 and 41-4-12 NMSA 1978 and general liability coverage for after-
6 hours community use of facilities pursuant to Section 41-4-6
7 NMSA 1978 shall be provided to its member public school
8 districts and participating other educational entities of the
9 public school insurance authority, by the authority, and except
10 that coverage shall be provided to a contractor and his
11 employees only through the public school insurance authority or
12 its successor, unless the district to which the contractor
13 provides services has been granted a waiver by the authority or
14 the authority is not offering the coverage for the fiscal year
15 for which the division offers its coverage. General liability
16 coverage for after-hours community use of facilities shall not
17 exceed one million dollars (\$1,000,000) combined single limit
18 per occurrence. A local school district to which the division
19 may provide coverage may provide for marketing and servicing to
20 be done by licensed insurance agents who shall receive
21 reasonable compensation for their services; and

22 (9) to insure or provide certificates of
23 coverage for any ancillary coverage typically found in
24 commercially available liability policies provided to
25 governmental entities, if the coverage is commercially

.156438.2

1 unavailable.

2 C. No settlement of any claim covered by the public
3 liability fund in excess of twenty-five thousand dollars
4 (\$25,000) shall be made unless the settlement has first been
5 approved in writing by the director of the risk management
6 division of the general services department. This subsection
7 shall not be construed to limit the authority of an insurance
8 carrier, covering any liability under the Tort Claims Act, to
9 compromise, adjust and settle claims against governmental
10 entities or their public employees.

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

24 Section 2. A new section of the Public School Code is
25 enacted to read:

.156438.2

