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SENATE BILL 3

42ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION
1996

INTRODUCED BY
MANNY M ARAGON

AN ACT

RELATING TO STATE FUNDS; CREATING THE RISK RESERVE IN THE
GENERAL FUND; PROVIDING FOR TRANSFERS INTO AND EXPENDITURES FROM
THE RISK RESERVE UNDER CERTAIN CIRCUMSTANCES; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] RISK RESERVE CREATED IN THE
GENERAL FUND.--

A. The "risk reserve" is created in the general
fund. The risk reserve shall consist of all money transferred
to the risk reserve pursuant to Sections 10-2-16, 13-5-1,
15-7-6, 41-4-23 and 51-1-45 NMSA 1978. A separate account
within the risk reserve shall be kept for each source of the
transfers into the risk reserve. Interest earned on the risk

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1 reserve shall be credited to the risk reserve.

2 B. The risk reserve may be expended only upon
3 specific authorization by the legislature in an amount
4 authorized by the legislature for the following purposes, as
5 designated in the legislative authorization:

6 (1) in the event that general fund balances,
7 including all authorized revenues and transfers to the general
8 fund and balances in the general fund operating reserve,
9 excluding balances in the risk reserve, are insufficient to meet
10 the level of appropriations authorized from the general fund
11 and, after all balances in the general fund operating reserve
12 have been expended, then necessary amounts from the risk reserve
13 may be authorized for transfer to the general fund for use in
14 meeting those appropriations; or

15 (2) in the event that any balance in the state
16 government unemployment compensation reserve fund, the local
17 public body unemployment compensation reserve fund, the public
18 property reserve fund, the public liability fund, the surety
19 bond fund or the workers' compensation retention fund is
20 insufficient to meet the expenditures required by law to be made
21 from each fund, the necessary amount may be authorized for
22 transfer from the appropriate account in the risk reserve to the
23 appropriate fund.

24 C. Upon the transfer of any amount pursuant to
25 Paragraph (1) of Subsection B of this section, the secretary of

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1 finance and administration shall determine, on an agency-by-
2 agency basis, how much of the transferred amount was derived
3 from federal funds. Upon a determination, the secretary shall
4 negotiate a settlement with the federal government concerning
5 any reimbursement that may be owed by the state. After
6 reporting to the legislative finance committee on the results of
7 the negotiations, the secretary is authorized to expend such
8 amount from the risk reserve as may be necessary to reimburse,
9 or otherwise compensate, the federal government and that amount
10 is appropriated for that purpose.

11 Section 2. Section 10-2-16 NMSA 1978 (being Laws 1978,
12 Chapter 132, Section 4, as amended) is amended to read:

13 "10-2-16. SURETY BOND FUND. --

14 A. There is created in the state treasury a "surety
15 bond fund".

16 B. Money deposited in the surety bond fund may be
17 expended by the department:

18 (1) to provide surety bond coverage;

19 [~~(2) to create a retention fund to cover all or~~
20 ~~any portion of the surety bond risks of state agencies and~~
21 ~~covered educational entities;~~

22 ~~(3)]~~ (2) to pay claims of state agencies and
23 covered educational entities covered by a surety bond
24 certificate of coverage issued by the department; and

25 [~~(4)]~~ (3) to pay any costs and expenses of

. 112402. 2

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1 carrying out the provisions of this section.

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

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

22 E. The department may provide individual surety bond
23 coverage protecting employees who are employers or supervisors
24 from personal losses for which they may be responsible, which
25 losses were caused by the lack of honesty or faithful

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1 performance of employees under their supervision or control.

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

5 G. The risk management advisory board shall review:

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

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

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

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

22 Section 3. Section 13-5-1 NMSA 1978 (being Laws 1981,
23 Chapter 101, Section 1, as amended) is amended to read:

24 "13-5-1. STATE AGENCY PUBLIC PROPERTY--INSURANCE--RESERVES
25 FOR LOSSES OF STATE AGENCIES--PUBLIC PROPERTY RESERVE FUND

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1 CREATED. --

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

15 B. Subject to any deductible to be borne by
16 individual state agencies or covered educational entities, the
17 risk management division of the general services department may
18 purchase insurance [~~establish reserves or provide a combination
19 of insurance and reserves~~] to:

20 (1) cover, in any amount not to exceed
21 replacement cost, buildings of state agencies or covered
22 educational entities destroyed or damaged by any peril other
23 than a peril set forth in Subsection A of this section;

24 (2) cover, in any amount not to exceed
25 replacement cost, any personal property [~~which~~] that is

. 112402. 2

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1 destroyed or damaged by any peril; or

2 (3) cover, in any amount not to exceed
3 replacement cost, any personal property which is stolen.

4 C. Any insurance purchased pursuant to Subsections A
5 and B of this section may be purchased with such deductible
6 provisions as may be deemed desirable by the risk management
7 advisory board.

8 D. The director of the risk management division of
9 the general services department shall include in his annual
10 report to the legislature an inventory of all public buildings
11 insured by the division, the estimated total value of such
12 buildings, the total insured value of such buildings and the
13 amount of any deductible or maximum loss provisions in the
14 current insurance policy covering such buildings.

15 E. There is created in the state treasury the
16 "public property reserve fund". The fund shall consist of
17 assessments of state agencies and covered educational entities
18 deposited in the fund, money appropriated to the fund, income
19 earned by the fund and money received as proceeds of insurance
20 purchased pursuant to this section. The fund may be used to:

21 (1) purchase property insurance;

22 (2) pay any claim covered by a certificate of
23 coverage issued by the director of the risk management division
24 of the general services department; provided such claims shall
25 only be paid to the extent of actual expenses [~~which~~] that have

. 112402. 2

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1 been or will be incurred to repair, reconstruct and replace
2 covered property;

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

6 (4) enter into such consulting and other
7 contracts as may be necessary or desirable in carrying out the
8 provisions of this section; and

9 (5) pay any costs and expenses incurred in
10 carrying out the provisions of this section.

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

18 G. For purposes of this section, "state agency"
19 means the state or any of its branches, agencies, departments,
20 boards, instrumentalities or institutions.

21 H. For the purposes of this section, "covered
22 educational entities" means school districts as defined in
23 Section 22-1-2 NMSA 1978 and educational institutions
24 established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA
25 1978 ~~[which]~~ that request and are granted coverage from the risk

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1 management division of the general services department, if the
2 coverage is commercially unavailable; except that coverage shall
3 be provided to a school district only through the public school
4 [group] insurance authority or its successor unless the district
5 has been granted a waiver by the authority or the authority is
6 not offering the coverage for the fiscal year for which the
7 division offers its coverage. A local school district to which
8 the division may provide coverage may provide for marketing and
9 servicing to be done by licensed insurance agents who shall
10 receive reasonable compensation for their services.

11 ~~[I. The provisions of this section are effective~~
12 ~~July 1, 1990.]~~

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

23 Section 4. Section 15-7-6 NMSA 1978 (being Laws 1977,
24 Chapter 385, Section 9, as amended) is amended to read:

25 "15-7-6. WORKERS' COMPENSATION RETENTION FUND. --

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1 A. There is created in the state treasury the
2 "workers' compensation retention fund".

3 B. Money deposited in, earned by or appropriated to
4 the workers' compensation retention fund may be used by the
5 director to:

6 (1) purchase workers' compensation insurance;

7 [~~(2)~~] ~~establish appropriate reserves to provide~~
8 ~~workers' compensation coverage for employees of state agencies~~
9 ~~or employees of covered educational entities;~~

10 ~~(3)~~] (2) pay workers' compensation claims in
11 accordance with the Workers' Compensation Act;

12 [~~(4)~~] (3) enter into consulting and other
13 contracts as may be necessary or desirable in carrying out the
14 provisions of this section; and

15 [~~(5)~~] (4) pay any costs or expenses incurred in
16 carrying out the provisions of this section.

17 C. For the purposes of this section, "covered
18 educational entities" means school districts as defined in
19 Section 22-1-2 NMSA 1978 and educational institutions
20 established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA
21 1978 [~~which~~] that request and are granted coverage from the risk
22 management division of the general services department, if the
23 coverage is commercially unavailable; except that coverage shall
24 be provided to a school district only through the public school
25 [~~group~~] insurance authority or its successor unless the district

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1 has been granted a waiver by the authority or the authority is
2 not offering the coverage for the fiscal year for which the
3 division offers its coverage. A local school district to which
4 the division may provide coverage may provide for marketing and
5 servicing to be done by licensed insurance agents who shall
6 receive reasonable 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 cash
9 balance in the workers' compensation retention fund, all revenue
10 projected to be deposited into the fund during the next fiscal
11 year and all expenditures projected to be made from the fund
12 during the next fiscal year. Within fifteen days of the
13 calculation, ninety percent of all projected excess cash
14 balances shall be transferred to the risk reserve. Excess cash
15 balances shall be calculated as the current cash balance plus
16 projected revenue minus projected expenditures. "

17 Section 5. Section 41-4-23 NMSA 1978 (being Laws 1977,
18 Chapter 386, Section 17, as amended) is amended to read:

19 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

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

25 B. Money deposited in the public liability fund may

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1 be expended by the risk management division of the general
2 services department:

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

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

9 (3) to defend, save harmless and indemnify any
10 state agency or employee of a state agency or a local public
11 body or an employee of such local public body for any claim or
12 liability covered by a valid and current certificate of coverage
13 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 or
17 law firms on a per-hour basis, or with the attorney general, to
18 defend tort liability claims against governmental entities and
19 public employees acting within the scope of their duties;

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

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

24 [~~(8) to cover personal injury liability risks of~~
25 ~~governmental entities, including the risks set forth in~~

. 112402. 2

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1 ~~Paragraph (2) of Subsection B and Paragraph (2) of Subsection D~~
2 ~~of Section 41-4-4 NMSA 1978, to the extent and to the limits of~~
3 ~~any certificate of coverage;~~

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

23 ~~[(10)]~~ (8) to insure or provide certificates of
24 coverage for any ancillary coverage typically found in
25 commercially available liability policies provided to

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1 governmental entities, if the coverage is commercially
2 unavailable.

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

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

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1 E. On or before June 15 of each fiscal year, the
2 risk management advisory board shall calculate the current cash
3 balance in the public liability fund, all revenue projected to
4 be deposited into the fund during the next fiscal year and all
5 expenditures projected to be made from the fund during the next
6 fiscal year. Within fifteen days of the calculation, ninety
7 percent of all projected excess cash balances shall be
8 transferred to the risk reserve. Excess cash balances shall be
9 calculated as the current cash balance plus projected revenue
10 minus projected expenditures. "

11 Section 6. Section 51-1-45 NMSA 1978 (being Laws 1977,
12 Chapter 227, Section 7, as amended) is amended to read:

13 "51-1-45. STATE GOVERNMENT UNEMPLOYMENT COMPENSATION
14 RESERVE FUND CREATED--PURPOSES--ASSESSMENTS.--

15 A. There is created a "state government unemployment
16 compensation reserve fund". The fund and any income from the
17 fund shall be held in trust, deposited in a segregated account
18 and invested by the director of the risk management division of
19 the general services department with the prior approval of the
20 state board of finance. Money in the fund is hereby
21 appropriated to carry out the purposes of the fund.

22 B. The director of the risk management division of
23 the general services department shall assess each state agency
24 at the end of each calendar quarter in accordance with the rate
25 schedule prescribed by the risk management division plus an

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1 additional amount to pay reasonable costs of administration of
2 the fund. Assessments shall be deposited in the state
3 government unemployment compensation reserve fund to carry out
4 the purposes of Laws 1977, Chapter 227, as amended. The
5 director of the risk management division shall approve the
6 method of computing the amounts that are payable under this
7 subsection by each state agency and the time and manner of
8 payments.

9 C. Money deposited in the state government
10 unemployment compensation reserve fund may be used by the
11 director of the risk management division of the general services
12 department to:

13 (1) pay the department for benefits paid to
14 employees of state agencies;

15 (2) pay any costs or expenses incurred in
16 protesting benefits paid by the department; and

17 (3) pay any other costs incurred in carrying
18 out the provisions of this section [~~and~~

19 ~~(4) establish and maintain a reserve fund for~~
20 ~~paying reimbursements of benefits paid to employees of state~~
21 ~~agencies].~~

22 D. On or before June 15 of each fiscal year, the
23 risk management advisory board shall calculate the current cash
24 balance in the state government unemployment compensation
25 reserve fund, all revenue projected to be deposited into the

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1 fund during the next fiscal year and all expenditures projected
2 to be made from the fund during the next fiscal year. Within
3 fifteen days of the calculation, ninety percent of all projected
4 excess cash balances shall be transferred to the risk reserve.
5 Excess cash balances shall be calculated as the current cash
6 balance plus projected revenue minus projected expenditures. "

7 Section 7. EMERGENCY. --It is necessary for the public
8 peace, health and safety that this act take effect immediately.

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1 FORTY- SECOND LEGI SLATURE
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5 March 20, 1996
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7 Mr. President:
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9 Your FINANCE COMMI TTEE, to whom has been referred
10

11 SENATE BILL 3
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13 has had it under consideration and reports same with
14 recommendation that it DO PASS.
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16 Respectfully submit ted,
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21 Ben D. Altami rano, Chair man
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25 Adopted _____ Not Adopted _____
(Chi ef Clerk) (Chi ef Clerk)

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Date _____

The roll call vote was 10 For 0 Against

Yes: 10

No: 0

Excused: Duran, Ingle, Kidd

Absent: None

S0003FC1

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE
FIRST SPECIAL SESSION, 1996

March 20, 1996

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

SENATE BILL 3

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Max Coll, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 18 For 0 Against
Yes: 18
Excused: None
Absent: None

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