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SENATE BILL 6

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 for
11 a fiscal year, an amount may be authorized for transfer from the
12 risk reserve to the general fund, but only in an amount
13 necessary to meet general fund appropriations after transfers
14 from the general fund operating reserve have been made that
15 equal five percent of the appropriations for that fiscal year;
16 or

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

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1 C. Upon the transfer of any amount pursuant to
2 Paragraph (1) of Subsection B of this section and upon a finding
3 by the secretary of finance and administration that there is no
4 schedule of repayment of that amount to the risk reserve, the
5 secretary shall determine, on an agency-by-agency basis, how
6 much of the transferred amount was derived from federal funds.
7 Upon a determination, the secretary shall negotiate a settlement
8 with the federal government concerning any reimbursement that
9 may be owed by the state. After reporting to the legislative
10 finance committee on the results of the negotiations, the
11 secretary is authorized to reimburse, or otherwise compensate,
12 the federal government, and that amount is appropriated for that
13 purpose.

14 D. It is the intent of the legislature that the risk
15 reserve be reimbursed in full for any amounts transferred
16 pursuant to Paragraph (1) of Subsection B of this section. The
17 secretary of finance and administration shall recommend in the
18 annual executive budget recommendation a proposed schedule of
19 repayment to the risk reserve of any such amounts transferred.

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

22 "10-2-16. SURETY BOND FUND. --

23 A. There is created in the state treasury a "surety
24 bond fund".

25 B. Money deposited in the surety bond fund may be

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1 expended by the department:

2 (1) to provide surety bond coverage;

3 [~~(2)~~] ~~to create a retention fund to cover all or~~
4 ~~any portion of the surety bond risks of state agencies and~~
5 ~~covered educational entities;~~

6 ~~(3)]~~ (2) to pay claims of state agencies and
7 covered educational entities covered by a surety bond
8 certificate of coverage issued by the department; and

9 [~~(4)]~~ (3) to pay any costs and expenses of
10 carrying out the provisions of this section.

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

24 D. The department shall collect or transfer funds
25 from each state agency and covered educational entity to cover

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1 costs of coverage of employees of the agency as required by this
2 section. Money collected or transferred from a state agency or
3 covered educational entity pursuant to this subsection shall be
4 deposited in the surety bond fund. Income from the surety bond
5 fund shall be credited to the fund.

6 E. The department may provide individual surety bond
7 coverage protecting employees who are employers or supervisors
8 from personal losses for which they may be responsible, which
9 losses were caused by the lack of honesty or faithful
10 performance of employees under their supervision or control.

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

14 G. The risk management advisory board shall review:

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

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

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

21 H. Before the beginning of each fiscal year, the
22 risk management advisory board shall calculate the current cash
23 balance in the surety bond fund, all revenue projected to be
24 deposited into the fund during the next fiscal year and all
25 expenditures projected to be made from the fund during the next

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1 fiscal year. Ninety percent of all projected excess cash
2 balances shall be transferred to the risk reserve. Excess cash
3 balances shall be calculated as the current cash balance plus
4 projected revenue minus projected expenditures. "

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

7 "13-5-1. STATE AGENCY PUBLIC PROPERTY--INSURANCE--RESERVES
8 FOR LOSSES OF STATE AGENCIES--PUBLIC PROPERTY RESERVE FUND
9 CREATED. --

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

23 B. Subject to any deductible to be borne by
24 individual state agencies or covered educational entities, the
25 risk management division of the general services department may

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1 purchase insurance [~~establish reserves or provide a combination~~
2 ~~of insurance and reserves~~] to:

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

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

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

12 C. Any insurance purchased pursuant to Subsections A
13 and B of this section may be purchased with such deductible
14 provisions as may be deemed desirable by the risk management
15 advisory board.

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

23 E. There is created in the state treasury the
24 "public property reserve fund". The fund shall consist of
25 assessments of state agencies and covered educational entities

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1 deposited in the fund, money appropriated to the fund, income
2 earned by the fund and money received as proceeds of insurance
3 purchased pursuant to this section. The fund may be used to:

4 (1) purchase property insurance;

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

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

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

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

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

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1 G. For purposes of this section, "state agency"
2 means the state or any of its branches, agencies, departments,
3 boards, instrumentalities or institutions.

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

19 ~~I. The provisions of this section are effective~~
20 ~~July 1, 1990.~~]

21 I. Before the beginning of each fiscal year, the
22 risk management advisory board shall calculate the current cash
23 balance in the public property reserve fund, all revenue
24 projected to be deposited into the fund during the next fiscal
25 year and all expenditures projected to be made from the fund

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1 during the next fiscal year. Ninety percent of all projected
2 excess cash balances shall be transferred to the risk reserve.
3 Excess cash balances shall be calculated as the current cash
4 balance plus projected revenue minus projected expenditures. "

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

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

8 A. There is created in the state treasury the
9 "workers' compensation retention fund".

10 B. Money deposited in, earned by or appropriated to
11 the workers' compensation retention fund may be used by the
12 director to:

13 (1) purchase workers' compensation insurance;

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

17 [~~(3)~~] (2) pay workers' compensation claims in
18 accordance with the Workers' Compensation Act;

19 [~~(4)~~] (3) enter into consulting and other
20 contracts as may be necessary or desirable in carrying out the
21 provisions of this section; and

22 [~~(5)~~] (4) pay any costs or expenses incurred in
23 carrying out the provisions of this section.

24 C. For the purposes of this section, "covered
25 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 NMSA
3 1978 [~~which~~] that request and are granted coverage from the risk
4 management division of the general services department, if the
5 coverage is commercially unavailable; except that coverage shall
6 be provided to a school district only through the public school
7 [~~group~~] insurance authority or its successor unless the district
8 has been granted a waiver by the authority or the authority is
9 not offering the coverage for the fiscal year for which the
10 division offers its coverage. A local school district to which
11 the division may provide coverage may provide for marketing and
12 servicing to be done by licensed insurance agents who shall
13 receive reasonable compensation for their services.

14 D. Before the beginning of each fiscal year, the
15 risk management advisory board shall calculate the current cash
16 balance in the workers' compensation retention fund, all revenue
17 projected to be deposited into the fund during the next fiscal
18 year and all expenditures projected to be made from the fund
19 during the next fiscal year. Ninety percent of all projected
20 excess cash balances shall be transferred to the risk reserve.
21 Excess cash balances shall be calculated as the current cash
22 balance plus projected revenue minus projected expenditures."

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

25 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES.--

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1 A. There is created the "public liability fund".
2 The fund and any income from the fund shall be held in trust,
3 deposited in a segregated account and invested by the general
4 services department with the prior approval of the state board
5 of finance.

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

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

12 (2) to contract with one or more consulting or
13 claims adjusting firms pursuant to the provisions of Section 41-
14 4-24 NMSA 1978;

15 (3) to defend, save harmless and indemnify any
16 state agency or employee of a state agency or a local public
17 body or an employee of such local public body for any claim or
18 liability covered by a valid and current certificate of coverage
19 to the limits of such certificate of coverage;

20 (4) to pay claims and judgments covered by a
21 certificate of coverage;

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

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

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

5 ~~(8) to cover personal injury liability risks of~~
6 ~~governmental entities, including the risks set forth in~~
7 ~~Paragraph (2) of Subsection B and Paragraph (2) of Subsection D~~
8 ~~of Section 41-4-4 NMSA 1978, to the extent and to the limits of~~
9 ~~any certificate of coverage;~~

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

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1 the division may provide coverage may provide for marketing and
2 servicing to be done by licensed insurance agents who shall
3 receive reasonable compensation for their services; and
4 [~~(10)~~] (8) to insure or provide certificates of
5 coverage for any ancillary coverage typically found in
6 commercially available liability policies provided to
7 governmental entities, if the coverage is commercially
8 unavailable.

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

18 D. Claims against the public liability fund shall be
19 made in accordance with rules or regulations of the director of
20 the risk management division of the general services department.
21 If the director of the risk management division has reason to
22 believe that the fund, including any transfers to the fund from
23 the risk reserve, would be exhausted by payment of all claims
24 allowed during a particular state fiscal year, pursuant to
25 regulations of the risk management division, the amounts paid to

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1 each claimant and other parties obtaining judgments shall be
2 prorated, with each party receiving an amount equal to the
3 percentage his own payment bears to the total of claims or
4 judgments outstanding and payable from the fund. Any amounts
5 due and unpaid as a result of such proration shall be paid in
6 the following fiscal years.

7 E. Before the beginning of each fiscal year, the
8 risk management advisory board shall calculate the current cash
9 balance in the public liability fund, all revenue projected to
10 be deposited into the fund during the next fiscal year and all
11 expenditures projected to be made from the fund during the next
12 fiscal year. Ninety percent of all projected excess cash
13 balances shall be transferred to the risk reserve. Excess cash
14 balances shall be calculated as the current cash balance plus
15 projected revenue minus projected expenditures. "

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

18 "51-1-45. STATE GOVERNMENT UNEMPLOYMENT COMPENSATION
19 RESERVE FUND CREATED--PURPOSES--ASSESSMENTS.--

20 A. There is created a "state government unemployment
21 compensation reserve fund". The fund and any income from the
22 fund shall be held in trust, deposited in a segregated account
23 and invested by the director of the risk management division of
24 the general services department with the prior approval of the
25 state board of finance. Money in the fund is hereby

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1 appropriated to carry out the purposes of the fund.

2 B. The director of the risk management division of
3 the general services department shall assess each state agency
4 at the end of each calendar quarter in accordance with the rate
5 schedule prescribed by the risk management division plus an
6 additional amount to pay reasonable costs of administration of
7 the fund. Assessments shall be deposited in the state
8 government unemployment compensation reserve fund to carry out
9 the purposes of Laws 1977, Chapter 227, as amended. The
10 director of the risk management division shall approve the
11 method of computing the amounts that are payable under this
12 subsection by each state agency and the time and manner of
13 payments.

14 C. Money deposited in the state government
15 unemployment compensation reserve fund may be used by the
16 director of the risk management division of the general services
17 department to:

18 (1) pay the department for benefits paid to
19 employees of state agencies;

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

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

24 ~~(4) establish and maintain a reserve fund for~~
25 ~~paying reimbursements of benefits paid to employees of state~~

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1 agencies].

2 D. Before the beginning of each fiscal year, the
3 risk management advisory board shall calculate the current cash
4 balance in the state government unemployment compensation
5 reserve fund, all revenue projected to be deposited into the
6 fund during the next fiscal year and all expenditures projected
7 to be made from the fund during the next fiscal year. Ninety
8 percent of all projected excess cash balances shall be
9 transferred to the risk reserve. Excess cash balances shall be
10 calculated as the current cash balance plus projected revenue
11 minus projected expenditures. "

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

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