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HOUSE BILL 29

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 1999

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

**RELATING TO RISK RESERVES; ABOLISHING THE RISK RESERVE IN THE
GENERAL FUND; TRANSFERRING BALANCES FROM THE RISK RESERVE TO
THE FUNDS FROM WHICH THE RISK RESERVE WAS CREATED; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.**

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

**Section 1. Section 10-2-16 NMSA 1978 (being Laws 1978,
Chapter 132, Section 4, as amended) is amended to read:**

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

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

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

(1) to provide surety bond coverage;

(2) to create a retention fund to cover all

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1 or any portion of the surety bond risks of state agencies and
2 covered educational entities;

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

6 ~~[(3)]~~ (4) to pay any costs and expenses of
7 carrying out the provisions of this section.

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

21 D. The department shall collect or transfer funds
22 from each state agency and covered educational entity to cover
23 costs of coverage of employees of the agency as required by
24 this section. Money collected or transferred from a state
25 agency or covered educational entity pursuant to this

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1 subsection shall be deposited in the surety bond fund. Income
2 from the surety bond fund shall be credited to the fund.

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

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

12 G. The risk management advisory board shall
13 review:

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

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

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

21 ~~[H. On or before June 15 of each fiscal year, the~~
22 ~~risk management advisory board shall calculate the current~~
23 ~~cash balance in the surety bond fund, all revenue projected to~~
24 ~~be deposited into the fund during the next fiscal year and all~~
25 ~~expenditures projected to be made from the fund during the~~

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

6 Section 2. Section 13-5-1 NMSA 1978 (being Laws 1981,
7 Chapter 101, Section 1, as amended) is amended to read:

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

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

24 B. Subject to any deductible to be borne by
25 individual state agencies or covered educational entities, the

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1 risk management division of the general services department
2 may purchase insurance, establish reserves or provide a
3 combination of insurance and reserves to cover, in any amount
4 not to exceed replacement cost:

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

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

12 (3) [~~cover, in any amount not to exceed~~
13 ~~replacement cost, any~~] personal property [~~which~~] that is
14 stolen.

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

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

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1 E. There is created in the state treasury the
2 "public property reserve fund". The fund shall consist of
3 assessments of state agencies and covered educational entities
4 deposited in the fund, money appropriated to the fund, income
5 earned by the fund and money received as proceeds of insurance
6 purchased pursuant to this section. The fund may be used to:

- 7 (1) purchase property insurance;
- 8 (2) pay any claim covered by a certificate of
9 coverage issued by the director of the risk management
10 division of the general services department; provided such
11 claims shall only be paid to the extent of actual expenses
12 that have been or will be incurred to repair, reconstruct and
13 replace covered property;
- 14 (3) pay the cost of repair, reconstruction
15 and replacement of property and expense incidental thereto
16 arising from damage or destruction covered pursuant to this
17 section;
- 18 (4) enter into [~~such~~] consulting and other
19 contracts as may be necessary or desirable in carrying out the
20 provisions of this section; and
- 21 (5) pay [~~any~~] costs and expenses incurred in
22 carrying out the provisions of this section.

23 F. The director of the legislative council service
24 may elect to cover all or any part of [~~any~~] public buildings
25 or property under his jurisdiction through the public property

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1 reserve fund by giving written notice of such election to the
2 director of the risk management division of the general
3 services department and paying assessments that the director
4 of the risk management division prescribes.

5 G. For purposes of this section, "state agency"
6 means the state or any of its branches, agencies, departments,
7 boards, instrumentalities or institutions.

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

24 [~~I. On or before June 15 of each fiscal year, the~~
25 ~~risk management advisory board shall calculate the current~~

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

9 Section 3. Section 15-7-6 NMSA 1978 (being Laws 1977,
10 Chapter 385, Section 9, as amended) is amended to read:

11 "15-7-6. WORKERS' COMPENSATION RETENTION FUND. --

12 A. There is created in the state treasury the
13 "workers' compensation retention fund".

14 B. Money deposited in, earned by or appropriated
15 to the workers' compensation retention fund may be used by the
16 director to:

- 17 (1) purchase workers' compensation insurance;
- 18 (2) establish appropriate reserves to provide
19 workers' compensation coverage for employees of state agencies
20 or employees of covered educational entities;

21 [~~2~~] (3) pay workers' compensation claims in
22 accordance with the Workers' Compensation Act;

23 [~~3~~] (4) enter into consulting and other
24 contracts as may be necessary or desirable in carrying out the
25 provisions of this section; and

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

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

~~[D. On or before June 15 of each fiscal year, the risk management advisory board shall calculate the current cash balance in the workers' compensation retention fund, all revenue projected to be deposited into the fund during the next fiscal year and all expenditures projected to be made from the fund during the next fiscal year. Within fifteen days of the calculation, ninety percent of all projected~~

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1 ~~excess cash balances shall be transferred to the risk reserve.~~
2 ~~Excess cash balances shall be calculated as the current cash~~
3 ~~balance plus projected revenue minus projected expenditures.]"~~

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

6 "41-4-23. PUBLIC LIABILITY FUND CREATED--PURPOSES. --

7 A. There is created the "public liability fund".
8 The fund and any income from the fund shall be held in trust,
9 deposited in a segregated account and invested by the general
10 services department with the prior approval of the state board
11 of finance.

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

15 (1) to purchase tort liability insurance for
16 state agencies and their employees and for any local public
17 body participating in the public liability fund and its
18 employees;

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

22 (3) to defend, save harmless and indemnify
23 any state agency or employee of a state agency or a local
24 public body or an employee of such local public body for any
25 claim or liability covered by a valid and current certificate

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1 of coverage to the limits of such certificate of coverage;

2 (4) to pay claims and judgments covered by a
3 certificate of coverage;

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

8 (6) to pay [~~any~~] costs and expenses incurred
9 in carrying out the provisions of this section;

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

12 [~~(7)~~] (8) to insure or provide certificates
13 of coverage to school bus contractors and their employees,
14 notwithstanding Subsection F of Section 41-4-3 NMSA 1978, for
15 any comparable risk for which immunity has been waived for
16 public employees pursuant to Section 41-4-5 NMSA 1978, if the
17 coverage is commercially unavailable; except that coverage for
18 exposure created by Sections 41-4-9, 41-4-10 and 41-4-12 NMSA
19 1978 shall be provided to its member public school districts
20 and participating other educational entities of the public
21 school insurance authority, by the authority, and except that
22 coverage shall be provided to a contractor and his employees
23 only through the public school insurance authority or its
24 successor, unless the district to which the contractor
25 provides services has been granted a waiver by the authority

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1 or the authority is not offering the coverage for the fiscal
2 year for which the division offers its coverage. A local
3 school district to which the division may provide coverage may
4 provide for marketing and servicing to be done by licensed
5 insurance agents who shall receive reasonable compensation for
6 their services; and

7 [~~(8)~~] (9) to insure or provide certificates
8 of coverage for any ancillary coverage typically found in
9 commercially available liability policies provided to
10 governmental entities, if the coverage is commercially
11 unavailable.

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

21 D. Claims against the public liability fund shall
22 be made in accordance with rules or regulations of the
23 director of the risk management division of the general
24 services department. If the director of the risk management
25 division has reason to believe that the fund [including any

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1 ~~transfers to the fund from the risk reserve]~~ would be
2 exhausted by payment of all claims allowed during a particular
3 state fiscal year, pursuant to regulations of the risk
4 management division, the amounts paid to each claimant and
5 other parties obtaining judgments shall be prorated, with each
6 party receiving an amount equal to the percentage his own
7 payment bears to the total of claims or judgments outstanding
8 and payable from the fund. Any amounts due and unpaid as a
9 result of such proration shall be paid in the following fiscal
10 years.

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

21 Section 5. Section 51-1-45 NMSA 1978 (being Laws 1977,
22 Chapter 227, Section 7, as amended) is amended to read:

23 "51-1-45. STATE GOVERNMENT UNEMPLOYMENT COMPENSATION
24 RESERVE FUND CREATED--PURPOSES--ASSESSMENTS.--

25 A. There is created a "state government

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1 unemployment compensation reserve fund". The fund and any
2 income from the fund shall be held in trust, deposited in a
3 segregated account and invested by the director of the risk
4 management division of the general services department with
5 the prior approval of the state board of finance. Money in
6 the fund is [hereby] appropriated to carry out the purposes of
7 the fund.

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

20 C. Money deposited in the state government
21 unemployment compensation reserve fund may be used by the
22 director of the risk management division of the general
23 services department to:

- 24 (1) pay the department for benefits paid to
- 25 employees of state agencies;

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1 (2) pay [any] costs or expenses incurred in
2 protesting benefits paid by the department; [and]

3 (3) pay [any] other costs incurred in
4 carrying out the provisions of this section; and

5 (4) establish and maintain a reserve fund for
6 paying reimbursements of benefits paid to employees of state
7 agencies.

8 ~~[D. On or before June 15 of each fiscal year, the~~
9 ~~risk management advisory board shall calculate the current~~
10 ~~cash balance in the state government unemployment compensation~~
11 ~~reserve fund, all revenue projected to be deposited into the~~
12 ~~fund during the next fiscal year and all expenditures~~
13 ~~projected to be made from the fund during the next fiscal~~
14 ~~year. Within fifteen days of the calculation, ninety percent~~
15 ~~of all projected excess cash balances shall be transferred to~~
16 ~~the risk reserve. Excess cash balances shall be calculated as~~
17 ~~the current cash balance plus projected revenue minus~~
18 ~~projected expenditures.] "~~

19 Section 6. TEMPORARY PROVISION-- FUND TRANSFER. -- On the
20 effective date of this act, the balance of each risk reserve
21 account shall be transferred to the appropriate fund for which
22 the account is kept.

23 Section 7. REPEAL. -- Section 6-4-2.4 NMSA 1978 (being
24 Laws 1996 (S.S.), Chapter 3, Section 1) is repealed.

25 Section 8. EFFECTIVE DATE. -- The effective date of the

1 provisions of this act is July 1, 1999.

2 Section 9. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect
4 immediately.

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