FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Woods	**ORIGINAL DATE**	02/01/25
SHORT TITLE	GSD Insurance Coverage Limits	**BILL NUMBER**	Senate Bill 182
		ANALYST	Fischer/Simon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Risk Management Funds	**$0**	**$0**	**$0**	**Net $0 fiscal impact (See Fiscal Implications)**	Recurring	**General Fund, Other State Funds, Local Government Funds**
Total	**$0**	**$0**	**$0**	**Net $0 fiscal impact (See Fiscal Implications)**	Recurring	**General Fund, Other State Funds, Local Government Funds**

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
General Services Department (GSD)

SUMMARY

Synopsis of Senate Bill 182

Senate Bill 182 creates a new subsection of statute under Section 15-7-3 NMSA 1978 defining the limits of risks to be covered by the public liability fund, the workers' compensation retention fund, and the public property reserve fund. The limits are $500 thousand for property damages, $1.05 million for general liability, and the limit defined in the New Mexico Civil Rights Act (currently over $2.3 million and increasing each year with inflation) for civil rights liability. The changes in SB182 were recommendations of a 2023 LFC program evaluation, "*Major Funds of the Risk Management Division.*" This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20th, 2025, if enacted.

FISCAL IMPLICATIONS

The bill would increase transparency of payouts for large claims from the state's risk management funds by requiring agencies with large claims to request additional appropriations directly from the Legislature, rather than relying on the risk management funds to pay these claims. Requiring agencies to directly request these funds serves an important accountability and loss prevention function, allowing the Legislature to exercise its oversight authority to determine if the agency has adopted sufficient policy changes or reforms designed to prevent future claims. However, agencies would need to request additional general fund appropriations to cover settlements above the risk limits, shifting some settlement payments from risk management funds to the general fund. This would reduce risk management rates for state agencies, decreasing the need for general fund appropriations in agency operating budgets. Overall, the shift in funds would be expected to even out, with the rise in direct appropriations for settlements offset by the reduction in RMD rates, resulting in a net $0 fiscal impact.

Settlements over the caps outlined in SB182 are rare but impactful. In FY23, RMD settled two civil rights claims against New Mexico State University for $4.1 million and $3.9 million and another against the Children, Youth and Families Department for $3.7 million. In FY24, RMD settled two civil rights claims against the Children, Youth and Families Department above the amount defined in the New Mexico Civil Rights Act ($2.29 million for FY24)—one for $5.5 million and another for $4.9 million. Implementing the risk limits defined in SB182 would not require significant staff time and resources outside of normal Risk Management Division (RMD) staff duties.

RMD did note that the only material impact Senate Bill 182 would have is to limit its ability to provide reinsurance for catastrophic losses of property in excess of $500 thousand. Currently, RMD procures property reinsurance for state-owned real estate (i.e., office buildings) and some highly specialized, high-value items (i.e., certain scientific and medical equipment) for losses over $500 thousand. This includes insurance up to the federal liability tort caps of over $322.9 million for rail passenger liability for the Rail Runner. As with the caps for general liability and civil rights liability, if a state agency experienced a loss of property in excess of $500 under SB182, it would need to absorb the loss and request appropriations from the Legislature if it wished to replace or repair that property.

SIGNIFICANT ISSUES

State law limits lawsuits and claims against New Mexico's state agencies in both scope and amount of damages that any plaintiff may be awarded. However, the details of each are determined by the specifics of the claim and under what part of state statute or U.S. law they fall. The two primary pieces of New Mexico statute related to claims against the government are the New Mexico Tort Claims Act and the New Mexico Civil Rights Act.

In addition to state law, individuals can bring cases against the state claiming deprivation of federal civil rights as granted under the Bill of Rights of the U.S. Constitution, which contains many of the same provisions as the New Mexico Bill of Rights. In this case, the federal law governing violations of U.S. Constitutional rights by state governments (42 U.S.C. § 1983) does not cap the amount of damages a plaintiff might be awarded, nor does it limit the use of punitive damages.

Unlike most private insurance, the Risk Management Division (RMD) of the General Services Department provides unlimited coverage for state agencies against liability claims. This provides comprehensive coverage for state agencies and other entities, even in the face of "nuclear" civil rights payouts stemming from federal civil rights violations. However, providing unlimited coverage also has several downsides for the state's risk funds. For one, the absence of coverage limits can introduce a level of moral hazard, encouraging less careful behavior by the insured agency, which feels little to no penalty for its risky actions. Additionally, where there is no coverage limit, plaintiffs suing the state might be less willing to settle for reasonable amounts when they know RMD will cover any judgment quickly, potentially leading to higher settlement demands and even more protracted and expensive litigation.

Establishing insurance limits would not eliminate the risk of judgments or settlements at prices beyond the limit, but it would require an additional appropriation by the Legislature to the agency to cover the difference. This requirement would, at a minimum, slow the availability of damages payments to the plaintiffs and their attorneys, reducing the attractiveness of these payments. Some other states, including Washington, Ohio, Maine, and Oklahoma, have taken this approach, providing liability coverage for settlements only up to a certain limit, such as those delineated in New Mexico's Tort Claims Act.

MF/rl