

RISK MANAGEMENT ADVISORY BOARD

**October 19, 2023
Via Microsoft Teams**

1. CALL TO ORDER

The meeting of the Risk Management Advisory Board called to order at 2:14 p.m. Teresa Costantinidis, Chair. The meeting was held via Microsoft Teams.

ROLL CALL

Roll call indicated the presence of a quorum as follows:

Members Present:

Teresa Ann Costantinidis, CFO of UNM
Alice Kane, Superintendent of Insurance
Cecilia Mavrommatis, Department of Finance and Administration
Rennette Apodaca, Designee for CFO of Albuquerque Public Schools
Carla Smith for Raul Torrez-Office of the Attorney General

Members Absent:

Michael Byrd, Insurance Agent
Raul Burciaga LFC Director
Carla Martinez for Raul Torrez-Office of the Attorney General
Quinn Lopez, Attorney
Anita Schwing

Others Present:

Robert Doucette, Jr.-Secretary-GSD
Jennifer Catechis-Deputy Secretary-GSD
Jacob Maule-Acting General Counsel
Markita Sanchez-GSD
Gerardo Ruelas-GSD
Joseph Simon, Department of Finance and Administration
Senator Pat Woods
Rick May-Policy Director for House Republican Leadership
Brad Matthews-GSD
Sharon Alexander

A Quorum was present.

2. APPROVAL OF THE AGENDA

Approved.

3. APPROVAL OF APRIL 20, 2023, MEETING MINUTES

Approved.

4. THE ROLE OF THE RISK MANAGEMENT ADVISORY BOARD

5. UPDATE FROM CABINET SECRETARY ROBERT DOUCETTE JR.

Robert Doucette Jr was confirmed last March. Last month they had the LFC interim hearings. Article in the Albuquerque Journal last Sunday and he would like to discuss three points from that article. LFC asked the Department to review the Risk Management Bureau. The last time a review happened was in 2005. Working with the LFC and DFA it was a good report. They pointed out some things that the last few years that we haven't given the elected officials anything paid over \$1,000. That is true, that hasn't happened in the last 3 years. Those reports will be done by December. GSD hired Jeanette Chavez as the Risk Management Director. She worked for the City of Albuquerque and has extensive experience. The article mentioned the Sunshine Portal and GSD not adding to it, there is not a law that states that the Department must add to the portal. The governor wants us to add to the portal. Secretary Ortiz wrote a memo stating that on the 1st and 15th, it should be updated. In the past the Department had directions to not put any children or vulnerable adults on the portal. The Department is having internal discussions on how to go about that while being transparent. The other big point of the interim hearing was health benefits and the fact that GSD is \$134 million in the hole. The Department will let the Chair of the Senate Finance and the Chair of the House of Representative at the beginning of the session what exactly that is. The Department increased all state employees by 10% on their health care benefits as of July 1, 2023. The Legislative Public Bodies will be raised by 10% also. For the session other than health care benefits, it does not seem GSD is not pushing any legislation. Nor does the Department know of anything on the Governor's call at the moment, however that could change. If that does change the Department will let the Committee know.

6. QUESTIONS TO THE CABINET SECRETARY:

Carla Smith: I know that the governor wants to have Sun Portal out and be transparent. What if people don't want to be on this portal?

Cabinet Secretary: All this information is IPRA-able by law. Anyone can ask for this information; we will give that information. We're talking about anything we pay out because of a lawsuit or settlement.

Carla Smith: What if people don't want their employer known for safety reasons?

Teresa Costantinidis: The spirit of the IPRA law in NM is that public records are public, and the public has a right to seek them. If there are safety concerns, then legal review can happen as to whether releasing would be done.

Cabinet Secretary: If a judge seals a record, we cannot put it in on the Sunshine Portal.

Carla Smith: So, the employee needs to legally go through a judge to seal the records?

Jacob Maule: This is public monies being paid and publicly accessible. They would also be reported to the Legislature in our annual report. That is anything over \$1,000, and that is statutorily required for us to do. If someone has received these monies, they would need to go to court and have a judge grant them some type of protection order to seal those records.

Apodaca: Did the State receive any federal funds to help with the 134 million?

Markita: I believe we received a couple of appropriations during that time. One was ARPA and the other was not. It was about \$25 million in total.

Rick May-What was the role of this advisory group in looking at that shortfall and whether the advisory group made any recommendation or suggestion of how that shortfall could be addressed or how it could have been avoided in the first place?

Markita: I do recall in FY 19 we were 2 million short, and we were watching it slowly go into the negative. Our request for increases was not taken into consideration at that time. In FY 22 that is when the Covid invoices started to hit extremely fast, and we were trying to process the payments. We worked with DFA to get those payments made through SHARE so as not drop coverage or leaving anyone in limbo without coverage. We did all we could. I know we were talking about different strategies when John Garcia and Randall Cherry were involved but nothing was ever pursued. We are still working on long-term plans, it's essential that we increase premium rate contributions every single year. I think that the 10% from state employees and 10% from LPB's will help.

Cabinet Secretary: There were two proposals last year, before I became Cabinet Secretary. One that came from the Governor's office to fill the 90 million hole and the other one that was accepted for HB2. That gave the Department a certain dollar amount and told us that we needed to go to LPB'S for that fiscal year FY23. As Cabinet Secretary, I will make sure the committee has the two proposals and my thoughts on each of them.

Rick May: The problem is that the time that elapsed when there was a shortfall and the Governor's office lack of concern over that shortfall. There is also the concern that since there insufficient dollars coming into the fund from employee earned employee contributions, dollars were outflowing from the fund in which there was really not a cash balance any longer. Who gave the approval or the authorization to utilize money out of the state treasury without official appropriation. Taking money out of the treasury without proper appropriation is not only inappropriate but also illegal. How did the shortfall occur? How did the money come about to be available in order to pay payments when there was no cash in the fund to pay?

Teresa: The meeting of the Advisory Board there are minutes and a record. While it was still under the purview of RMD, the Advisory Board did ask for updates as to what was happening. The role

of the Advisory Board is not to make decisions but to provide advice. I don't have the minutes in front of me, but I recall that the advice was to do something either a premium increase or something in order to address that shortfall.

Rick May: Part of the concern is the lack of understanding and the provisions of HB2. The members I represent never understood for whatever reason, that a provision in HB2 meant that local governments and other employers are going to be forced to pay \$32 million and the end of the fiscal year. Why did they stick this bill at the end of the fiscal year. They had no idea what they were approving. This is a very big issue for my members and should not be downplayed as an accounting error or as an accounting problem to them. This is a real policy question.

7. JENNIFER CATECHIS-HEALTH BENEFIT TRANSITION

In the 2023 legislative session the legislature created the Healthcare Authority of the Healthcare Department. This will move several healthcare benefits organizations into one entity. The Department has been working weekly with the HCA to make that transition as smooth as possible. Providing them with information on the infrastructure that our EBB has, including functions of the staff and operating budgets. We are working with them to determine how we get as clean of a budget for them to start the new fiscal year. We've included them in the RFP process and taken into consideration some of the things that they want including vendors, employees and the processes that go along with that.

The IBAC RFP should be published today by statute. RMD has to be part of that RFP but the healthcare authority does not. However, when the transition happens it will be subject to that standard.

Questions:

Teresa: Is this considered an RMD contract, or would it be with the new entity?

Jennifer: With the IBAC statute the RFP goes out and it is entered as RMD contract as the statute states that APS, NMPSIA, Risk Management and Retiree Health are all part of IBAC. Once the RFP is out there and proposals all are received then it is up to each individual IBAC to determine whether they enter into contracts and accept proposals.

Teresa: As a reminder, the statute gives the powers and duties of the RMAB to review all profession service and consulting contracts. This sounds like a professional services contract. If this is a professional service contract, then before it gets finalized it needs to be shared with the members of the Advisory Board.

8. BUREAU CHIEF PRESENTATION: GERARDO RUELAS AND MARKITA SANCHEZ – FINANCIAL BUREAU

PowerPoint presentation:

State Unemployment Estimated Cash Balance as of 06/30/23.

Ending balance FY22 column 13,073,000.00. Remember all this was happening during Covid.

We didn't invoice anybody for unemployment claims because the ARPA money covered those. You will see very little revenue coming in at the top part of the presentation. The fund was healthy enough to pay for all the claims that were reconciled with the DWS. The fund ending balance for 2023 will be 8 million 455.3. Starting out for fiscal year 24 our projection shows a growth to 13 million as we can start invoicing entities again. These numbers are all pending in our audit and have not been approved yet. I worked closely with ASD to get the most accurate numbers. You will see at the bottom of the 2023 column, and you will see outstanding liabilities. These will be booked in our audit for 4 million 664 which will leave the fund in a positive balance of \$3,000790.00. State unemployment consists of state agencies and public schools.

LFB Unemployment Estimated Cash Balance as of 06/30/23.

The fund balance is positive at the end of 22 and it remains positive at the end of 23. After outstanding liabilities, the projection will be 1.6 million. These are just projections as it depends on the unemployment rate and being able to invoice and getting back to normal after Covid.

Public Property Fund Estimated Cash Balance as of 06/30/23.

This fund is fairly healthy with a ending balance of FY22 with a little 16 million. The unaudited estimation of FY23 is 15 million. The outstanding liabilities is 8 million which would leave the estimated fund balance at 6.9 million. Property claims get settled rather quickly. So the projected fund balance for FY24 is 16 million but there aren't any outstanding liabilities to change that number.

Public Liability Fund Estimated Cash Balance as of 06/30/23.

Public Liability FY22 the end fund balance is 53.4 million. FY23 estimated ending cash balance is 43.2 million. The outstanding liabilities are large for this fund because of the case load that is pending at 99.2 million which would leave this fund -49 million. This fund gets looked at closely because of the caseload. We are working with an actuary to implement some solvency.

Questions:

Teresa: Can you explain a little bit more about what kind of activity would give you more solvency?

Markita: As for solvency we implement a small percentage increase to premiums going forward for the next 5 years until we see that we raise that percentage to at least 50%. We have never been fully funded for all of these outstanding liabilities; we just try to maintain to pay the claims.

Teresa: Worse case scenario is that we would pay out the \$92 million but from what I understand that we only expect to pay half of that. So, we going is increase the premiums to generate a little more but we will never expect to pay 100% of the total?

Markita: Correct.

Worker's Compensation Fund Estimated Cash Balance as of 06/30/23.

Worker's Comp FY22 ending balance is 38.7 million. FY23 ending balance is a little over 40 million. Worker's Comp is for life so you will see high outstanding liabilities. Which makes it harder to project for this fund. We are hitting our target, but you'll see it slowly decline.

Cabinet Secretary: The Worker's Comp Administration is currently working on a contract to hire a TPA and a PBM. Currently, we do the work in house. We are going to go out for a RFP to see if it might be better to send it to a third party or keep it in house.

Theresa: Could you spell out the acronyms TPA and PBM?

Markita: TPA is a third-party administrator and PBM is pharmaceutical benefits manager.

FY24 Health Benefits

This is an estimate that has not been audited yet and each month going forward this is a 5-year average after October and our estimated FY24 ending balance would be 145,203,000. This fund gets monitored closely and it looks like the premium increases are helping a little bit. The Department is working with HCAD and their plans to figure out how they will get in front of it. We are also hoping that we can work with DFA and LFC to get it resolved before it rolls over to HCAD.

To help answer Mr. May's question when we were executing this the fund was not going negative quickly. It was at negative 5 million and the Department thought we could manage 5 million, However, Covid hit, and we did not have 55 million in a contingency fund. The major goal of the Department was to not breach contracts and drop benefits. Health Benefits is an expense that is ongoing and recurring and should be funded that way. All of the funds have taken a huge hit because of Covid.

9. JACOB MAULE RISK MANAGEMENT:

Sharp increase since the beginning of the pandemic, double the number of claims that were received prior to March 2020. Since March of 2020, we have seen an average of 30 new litigated files per month, with an average of 2400 claims and litigated files. Those numbers do not seem to be slowing down. Today, the caseload sits around 3,000 total claims and litigated files. Previously out of 2400 files we would have 350-400 files that were litigated. Currently, with 3,000 plus files we have over 1,000 that are litigated files.

New Mexico Civil Rights Act is the largest settlement that we have engaged with. That case resolved at \$8million right before the end of the fiscal year. With this Act it does not seem that the number of claims and severity will go down. With the New Mexico Civil Rights Act the amount of recovery is increased for cost of living. Currently, the total cap has increased by \$300,000 and those numbers will increase.

Teresa: When we do a deep dive into the Legal Bureau in March we would love to see how those numbers compare to prior years.

Rick Mays: Could I ask Teresa a couple of questions of how those discussions with DFA were conducted about how the cash was provided to make up for a shortfall? Is it something that GSD initiated or someone from the Governors office initiated?

Markita: I take my guidance straight from DFA.

Rick Mays: So who approached who about that fact there a cash shortfall in the fund and in order to not cut off benefits? Who gave the approval to provide cash out of the state treasury?

Teresa: The Risk Management Advisory Board was not at all involved in any of those kinds of activities or discussions. You will want to follow up with the division to find out how the process actually worked. The kind of report you saw today is the type of report that was presented to the board in the past as a year end. When I first started in 2019/2020 there was a positive balance. All of this happened pretty quickly and during a pandemic. Those type of questions needs to be followed up with the Division.

Rick Mays: Madam Chair, just so you're aware, Representative Chatfield and Senator Woods has sent a letter to the Secretary asking those questions of both DFA and GSD and to the state. We have not received a response to either of those letters.

Teresa: That is something the Division needs to follow up on. Do we have any other questions for the presentation on the Finance Bureau?

Question: I had a quick question about the health benefits sheet at the end of the packet. I'm wondering about the \$133 million number on here repeated, did you say that included IBNR?

Markita: Yes

Question: Is this inclusive of anything that was received of the special appropriations?

Markita: Yes

10. BOARD DISCUSSION ITEMS:

None

11. PUBLIC COMMENTS

Jacob Maule: In the March Advisory Board meeting we engaged the new legal services RFP to contract with new law firms throughout the state. That was executed and we have new contracts with several firms throughout the state. We are getting ready to go and do another RFP for legal services. We received fewer responses than in past years, given the number of cases we have received. We are going to advertise more widely than done previously.

Teresa: I think that's wise. These are things I love to hear about so that we can monitor that. We did realize that legal needed help to clear out cases.

Jacob: Two things that are changing for this new RFP to try to entice more firms is increasing the total compensation we are offering. The top number will be \$225 per hour and the administrative changes.

Teresa: We do have the role of the Board to review consulting contracts. We don't look at them all the time. Does the Board want to review? No. Any other issues or topics for the good of the group?

Pat Woods: Thank you for the opportunity to sit in on the meeting today. What I find startling is how poor reserves we have in the funds. We know as we escalate the demand on the risk funds, we are going to have to increase those reserves. Do you as advisors bring forth a request to increase those reserves amounts for these funds or is that out of your purview?

Teresa: The Advisory Board would weigh into the Division and say to them "these seem low you should request additional funding"

Pat Woods: If you saw this problem, would be part of your responsibility to speak up about the problem?

Teresa: Absolutely.

Pat Woods: The reserves are really low on many of these funds.

12. NEXT MEETING—November 16, 2023.

Alternative Dispute Resolution Team and Loss Control

13. ADJOURN

With all business concluded at 3:07 p.m., the meeting was adjourned.

Signed and approved:

Teresa Costantinidis, Chair