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SENATE BILL 3

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Carrol H. Leavell and Larry A. Larrañaga

AN ACT

RELATING TO THE INSURANCE NOMINATING COMMITTEE; AMENDING CERTAIN PROVISIONS REGARDING THE COMMITTEE AND SUPERINTENDENT OF INSURANCE; PROVIDING THAT THE OFFICE OF SUPERINTENDENT OF INSURANCE WILL ADMINISTRATIVELY SUPPORT THE INSURANCE NOMINATING COMMITTEE; MAKING THE INSURANCE NOMINATING COMMITTEE AND ITS MEMBERS SUBJECT TO THE PROVISIONS OF CERTAIN LAWS.

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

SECTION 1. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this

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1 section;

2 C. "local public body" means all political  
3 subdivisions of the state and their agencies, instrumentalities  
4 and institutions and all water and natural gas associations  
5 organized pursuant to Chapter 3, Article 28 NMSA 1978;

6 D. "law enforcement officer" means a full-time  
7 salaried public employee of a governmental entity, or a  
8 certified part-time salaried police officer employed by a  
9 governmental entity, whose principal duties under law are to  
10 hold in custody any person accused of a criminal offense, to  
11 maintain public order or to make arrests for crimes, or members  
12 of the national guard when called to active duty by the  
13 governor;

14 E. "maintenance" does not include:

15 (1) conduct involved in the issuance of a  
16 permit, driver's license or other official authorization to use  
17 the roads or highways of the state in a particular manner; or

18 (2) an activity or event relating to a public  
19 building or public housing project that was not foreseeable;

20 F. "public employee" means an officer, employee or  
21 servant of a governmental entity, excluding independent  
22 contractors except for individuals defined in Paragraphs (7),  
23 (8), (10), (14) and (17) of this subsection, or of a  
24 corporation organized pursuant to the Educational Assistance  
25 Act, the Small Business Investment Act or the Mortgage Finance

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1 Authority Act or a licensed health care provider, who has no  
2 medical liability insurance, providing voluntary services as  
3 defined in Paragraph (16) of this subsection and including:

4 (1) elected or appointed officials;

5 (2) law enforcement officers;

6 (3) persons acting on behalf or in service of  
7 a governmental entity in any official capacity, whether with or  
8 without compensation;

9 (4) licensed foster parents providing care for  
10 children in the custody of the human services department,  
11 corrections department or department of health, but not  
12 including foster parents certified by a licensed child  
13 placement agency;

14 (5) members of state or local selection panels  
15 established pursuant to the Adult Community Corrections Act;

16 (6) members of state or local selection panels  
17 established pursuant to the Juvenile Community Corrections Act;

18 (7) licensed medical, psychological or dental  
19 arts practitioners providing services to the corrections  
20 department pursuant to contract;

21 (8) members of the board of directors of the  
22 New Mexico medical insurance pool;

23 (9) individuals who are members of medical  
24 review boards, committees or panels established by the  
25 educational retirement board or the retirement board of the

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1 public employees retirement association;

2 (10) licensed medical, psychological or dental  
3 arts practitioners providing services to the children, youth  
4 and families department pursuant to contract;

5 (11) members of the board of directors of the  
6 New Mexico educational assistance foundation;

7 (12) members of the board of directors of the  
8 New Mexico student loan guarantee corporation;

9 (13) members of the New Mexico mortgage  
10 finance authority;

11 (14) volunteers, employees and board members  
12 of court-appointed special advocate programs;

13 (15) members of the board of directors of the  
14 small business investment corporation;

15 (16) health care providers licensed in New  
16 Mexico who render voluntary health care services without  
17 compensation in accordance with rules promulgated by the  
18 secretary of health. The rules shall include requirements for  
19 the types of locations at which the services are rendered, the  
20 allowed scope of practice and measures to ensure quality of  
21 care;

22 (17) an individual while participating in the  
23 state's adaptive driving program and only while using a  
24 special-use state vehicle for evaluation and training purposes  
25 in that program; ~~and~~

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1 (18) the staff and members of the board of  
2 directors of the New Mexico health insurance exchange  
3 established pursuant to the New Mexico Health Insurance  
4 Exchange Act; and

5 (19) members of the insurance nominating  
6 committee;

7 G. "scope of duty" means performing any duties that  
8 a public employee is requested, required or authorized to  
9 perform by the governmental entity, regardless of the time and  
10 place of performance; and

11 H. "state" or "state agency" means the state of New  
12 Mexico or any of its branches, agencies, departments, boards,  
13 instrumentalities or institutions."

14 SECTION 2. Section 59A-2-2 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 20, as amended) is amended to read:

16 "59A-2-2. SUPERINTENDENT--APPOINTMENT--TERM--  
17 COMPENSATION--REMOVAL.--

18 A. The position of superintendent of insurance  
19 shall be the chief officer of the office of superintendent of  
20 insurance.

21 B. The superintendent shall be appointed by the  
22 insurance nominating committee.

23 C. The superintendent shall serve for a term of  
24 four years, except that the initial term beginning July 1, 2013  
25 shall end on December 31, 2015. If the position of

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1 superintendent becomes vacant, the successor shall serve for  
2 the remainder of the term [~~vacated~~]. An incumbent  
3 superintendent may apply to the insurance nominating committee  
4 for appointment to additional terms.

5 D. The superintendent's annual compensation shall  
6 be established by the [~~legislature in an appropriations act~~  
7 ~~and~~] insurance nominating committee at the start of each term  
8 and annually thereafter. The superintendent's annual  
9 compensation shall be no lower than that of the lowest-  
10 compensated cabinet secretary and no higher than that of the  
11 highest-compensated cabinet secretary.

12 E. The superintendent shall not be removed except  
13 for incompetence, willful neglect of duty or malfeasance in  
14 office. The insurance nominating committee may remove the  
15 superintendent after [~~first~~] providing the superintendent with  
16 notice and a hearing."

17 SECTION 3. Section 59A-2-2.1 NMSA 1978 (being Laws 2013,  
18 Chapter 74, Section 15) is amended to read:

19 "59A-2-2.1. INSURANCE NOMINATING COMMITTEE--DUTIES--  
20 ADMINISTRATIVE ATTACHMENT.--

21 A. The "insurance nominating committee" is created  
22 and consists of nine members, including:

23 (1) four members who are selected by the New  
24 Mexico legislative council as follows:

25 (a) two members who shall represent the

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1 interests of the insurance industry;

2 (b) two members who shall represent the  
3 interests of insurance consumers and who have experience  
4 advocating on behalf of consumers or the public interest on  
5 insurance issues. These consumer members shall not be employed  
6 by or on behalf of or have a contract with an employer that is  
7 regulated by the office of superintendent of insurance; and

8 (c) no more than two of the four members  
9 shall be from the same political party;

10 (2) four members who are selected by the  
11 governor as follows:

12 (a) two members who shall represent the  
13 interests of the insurance industry;

14 (b) two members who shall represent the  
15 interests of insurance consumers and who have experience  
16 advocating on behalf of consumers or the public interest on  
17 insurance issues. These consumer members shall not be employed  
18 by or on behalf of or have a contract with an employer that is  
19 regulated by the office of superintendent of insurance; and

20 (c) no more than two of the four members  
21 shall be from the same political party; and

22 (3) a ninth member who shall be chair of the  
23 committee and who shall be selected by a majority [~~vote~~] of the  
24 other eight members; provided that the member shall:

25 (a) not be a candidate for the position

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1 of superintendent of insurance; and

2 (b) be either a former New Mexico  
3 superintendent of insurance or another person with extensive  
4 knowledge of insurance regulation in New Mexico, but does not  
5 have, nor have a spouse or child who has, any direct financial  
6 interest in an insurer, insurance agency or insurance  
7 transaction except as a policyholder or a claimant under a  
8 policy or as an owner of less than one percent of the shares of  
9 an insurer that is a publicly traded corporation.

10 B. A vacancy on the committee shall be filled by  
11 the original appointing authority for the remainder of the  
12 term.

13 ~~[B.]~~ C. A committee member shall:

14 (1) be a resident of New Mexico;

15 (2) serve a four-year term; except that a  
16 member of the first committee appointed shall serve for a term  
17 that ends on June 30, 2015; and

18 (3) serve without compensation, but shall be  
19 ~~[reimbursed for expenses incurred in pursuit of the member's~~  
20 ~~duties on the committee]~~ eligible to receive per diem and  
21 mileage pursuant to the Per Diem and Mileage Act.

22 ~~[G.]~~ D. The committee ~~[and individual members shall~~  
23 ~~be]~~ is subject to ~~[the Governmental Conduct Act]~~ the Inspection  
24 of Public Records Act ~~[the Financial Disclosure Act]~~ and the  
25 Open Meetings Act. Individual members of the committee are



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1 subject to the Governmental Conduct Act.

2 ~~[D. A regular session of]~~ E. The committee shall  
3 convene ~~[ninety days prior to the date of the initial term of~~  
4 ~~the superintendent and thereafter]~~ within ninety days prior to  
5 the date on which the term of a superintendent ends and shall  
6 ~~[conclude on the date that the initial superintendent or next~~  
7 ~~superintendent takes office. The committee shall select]~~  
8 appoint a superintendent within sixty days of convening.

9 ~~[E.]~~ F. Upon the occurrence of a vacancy in the  
10 superintendent position, the committee shall convene within  
11 thirty days of the date of ~~[the beginning of]~~ the vacancy ~~[for~~  
12 ~~a special session]~~ and shall appoint a successor to fill the  
13 remainder of the superintendent's term within sixty days of  
14 convening.

15 ~~[F. If a position on the committee becomes vacant~~  
16 ~~during a term, a successor shall be selected in the same manner~~  
17 ~~as the original appointment for that position and shall serve~~  
18 ~~for the remainder of the term of the position vacated.]~~

19 G. The committee shall actively solicit, accept and  
20 evaluate applications from qualified individuals for the  
21 position of superintendent and may require an applicant to  
22 submit any information it deems relevant to the consideration  
23 of the individual's application.

24 ~~[H. The committee shall select the applicant that,~~  
25 ~~in the committee's judgment, is best qualified to serve as~~

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1 ~~superintendent.~~

2 ~~I. A majority vote of all members of the committee~~  
3 ~~in favor of an applicant is required for that applicant to be~~  
4 ~~appointed superintendent.]~~

5 H. The committee shall appoint the superintendent  
6 by a vote of a majority of all members of the committee.

7 I. The committee shall meet no less often than  
8 annually.

9 J. The committee is administratively attached to  
10 the office of superintendent of insurance. The office of  
11 superintendent of insurance shall provide staff for the  
12 committee.

13 K. An employee of the office of superintendent of  
14 insurance who serves as staff for the committee shall not  
15 reveal to any person, except another committee staff person,  
16 any requests or statements disclosed in confidence by a  
17 committee member."

18 SECTION 4. Section 59A-2-3 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 21, as amended) is amended to read:

20 "59A-2-3. SUPERINTENDENT--QUALIFICATIONS AND BOND.--The  
21 superintendent shall:

22 A. ~~[have been]~~ be a resident of New Mexico ~~[for at~~  
23 ~~least one year before]~~ at the time of appointment;

24 B. be bonded as provided in the Surety Bond Act;

25 and

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1 C. not have [~~nor have a spouse or child who has,~~  
2 ~~any~~] a direct financial interest in an insurer, insurance  
3 agency or insurance transaction except as a policyholder or a  
4 claimant under a policy or as an owner of less than one percent  
5 of the shares of an insurer that is a publicly traded  
6 corporation."

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