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REFERENCE TITLE: **consent decrees; JLBC approval**

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

SB 1001

Introduced by

Senators Gnant, Cirillo, Solomon, Bee; Representatives Blendu, Knaperek, Binder, Pearce; Senators Aguirre, Arzberger, Bennett, Blanchard, Brown, Bundgaard, Cumiskey, Daniels, Guenther, Hamilton, Hartley, Hellon, Jackson, Jarrett, Lopez J, Mitchell, Petersen, Richardson, Rios, Smith, Valadez, Verkamp, Yrun; Representatives Allen, Anderson, Carpenter, Carruthers, Flake, Graf, Gullett, Hanson, Hatch-Miller, Hershberger, Huffman, Huppenthal, Marsh, McClure, O'Halleran, Pierce, Tully, Weiers

AN ACT

AMENDING SECTIONS 12-826 AND 41-621, ARIZONA REVISED STATUTES; RELATING TO RISK MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-826, Arizona Revised Statutes, is amended to
3 read:

4 12-826. Report of judgments to legislature by governor;
5 approval by JLBC; payment

6 A. The governor shall report to the legislature at each session
7 judgments rendered against the state, and not theretofore reported.

8 B. The director of the department of administration shall draw his
9 warrant for payment of the judgment upon presentation to him of an
10 authenticated copy of the judgment together with the approval of the judgment
11 by the attorney general.

12 C. THE APPROVAL OF THE ATTORNEY GENERAL AND THE JOINT LEGISLATIVE
13 BUDGET COMMITTEE IS REQUIRED TO SETTLE AND PAY ANY CLAIM OVER THE AMOUNT OF
14 FIFTY THOUSAND DOLLARS OR SUCH HIGHER LIMIT AS MAY BE ESTABLISHED BY THE
15 JOINT LEGISLATIVE BUDGET COMMITTEE. IF IT IS IN THE BEST INTEREST OF THIS
16 STATE, THE JOINT LEGISLATIVE BUDGET COMMITTEE MAY ESTABLISH HIGHER SETTLEMENT
17 LIMITS. THE ATTORNEY GENERAL AND THE JOINT LEGISLATIVE BUDGET COMMITTEE
18 SHALL APPROVE ANY SETTLEMENTS, INCLUDING ANY SETTLEMENT BY WAY OF A CONSENT
19 DECREE, THAT INVOLVE THE STATE ACCEPTING LIABILITY FOR A CLAIM OR THE STATE
20 ACCEPTING A CHANGE IN ANY LEGISLATIVE FUNDING FORMULA THAT ALREADY EXISTS IN
21 LAW. THE SETTLEMENT OF THESE CLAIMS SHALL BE SOLELY THE AUTHORITY OF THE
22 ATTORNEY GENERAL AND THE JOINT LEGISLATIVE BUDGET COMMITTEE.

23 ~~C.~~ D. The director of the department of administration shall not draw
24 the warrant until an appropriation therefor is made by the legislature.

25 Sec. 2. Section 41-621, Arizona Revised Statutes, is amended to read:

26 41-621. Purchase of insurance; coverage; limitations;
27 exclusions

28 A. The department of administration shall obtain insurance against
29 loss, to the extent it is determined necessary and in the best interests of
30 the state as provided in subsection F of this section, on the following:

31 1. All state owned buildings, including those of the universities,
32 excluding buildings of community colleges, whether financed in whole or in
33 part by state monies or buildings in which the state has an insurable
34 interest as determined by the department of administration.

35 2. Contents in any buildings owned, leased or rented, in whole or in
36 part, by or to the state, excluding buildings of community colleges, and
37 reported to the department of administration.

38 3. The state and its departments, agencies, boards and commissions and
39 all officers, agents and employees thereof and such others as may be
40 necessary to accomplish the functions or business of the state and its
41 departments, agencies, boards and commissions against liability for acts or
42 omissions of any nature while acting in authorized governmental or
43 proprietary capacities and in the course and scope of employment or
44 authorization except as prescribed by this chapter.

1 4. All personal property reported to the department of administration,
2 including vehicles and aircraft owned by the state and its departments,
3 agencies, boards and commissions and all non-owned personal property which is
4 under the clear responsibility of this state because of written leases or
5 other written agreements.

6 5. The state and its departments, agencies, boards and commissions
7 against casualty, use and occupancy and liability losses of every nature
8 except as prescribed by this chapter.

9 6. Workers' compensation and employers' liability insurance.

10 7. Design and construction of buildings, roads, environmental
11 remediations and other construction projects.

12 8. Other exposures to loss where insurance may be required to protect
13 this state and its departments, agencies, boards and commissions and all
14 officers, agents and employees acting in the course and scope of employment
15 or authorization except as prescribed by this chapter.

16 B. To the extent it is determined necessary and in the best interests
17 of the state, the department of administration shall obtain insurance or
18 provide for state self-insurance against property damage caused by clients
19 and liability coverage resulting from, the direct or incidental care of
20 clients participating in programs of the state and its departments, agencies,
21 boards or commissions relating to custodial care. The insurable programs
22 shall include foster care, programs for the developmentally disabled, an
23 independent living program pursuant to section 8-521 and respite-sitter
24 service programs. The department shall obtain insurance or provide for state
25 self-insurance pursuant to this subsection to protect the clients
26 participating in these programs and individual providers of these program
27 services on behalf of the state and its departments, agencies, boards or
28 commissions. The insurance provided under this subsection does not include
29 medical or workers' compensation coverage for providers. The department may
30 include in its annual budget request pursuant to section 41-622, subsection D
31 a charge for the insurance or self-insurance provided in this subsection. To
32 assist in carrying out the provisions of this subsection, the department
33 shall establish a seven member advisory board in accordance with the
34 following provisions:

35 1. The board shall consist of three members appointed by the director
36 of the department of administration, at least one of whom shall be a foster
37 parent, two members appointed by the director of the department of economic
38 security, one member appointed by the director of the state department of
39 corrections, and one member appointed by the administrative director of the
40 courts.

41 2. The board shall elect a chairman from among its members.

42 3. The board shall hold at least two meetings a year or shall meet at
43 the call of the chairman.

44 4. Board members shall serve for three year terms.

1 5. Board members are not eligible to receive compensation but are
2 eligible for reimbursement of expenses pursuant to title 38, chapter 4,
3 article 2.

4 6. The board shall provide advice to the department regarding coverage
5 and administration of the provisions of this subsection and shall assist the
6 department in coordinating its activities pursuant to this subsection with
7 state departments, agencies, boards and commissions.

8 C. The department of administration may obtain insurance against loss,
9 to the extent it is determined necessary and in the best interests of the
10 state as provided in subsection F of this section for the professional
11 liability of individual physicians and psychiatrists who provide services
12 under a contract with the state department of corrections. Coverage is
13 limited to acts and omissions committed inside a state department of
14 corrections facility while in the performance of the contract and to
15 individual physicians and psychiatrists who demonstrate to the satisfaction
16 of the state department of corrections that they cannot otherwise obtain
17 professional liability coverage for the services required by the contract.
18 The director of the department of administration may impose on the state
19 department of corrections a deductible of not more than ten thousand dollars
20 per loss that arises out of a professional liability claim pursuant to this
21 subsection. Deductible amounts established by the director shall be subject
22 to annual review by the joint legislative budget committee.

23 D. The department of administration may obtain property, liability,
24 disability or workers' compensation insurance, self-insure or develop risk
25 retention pools to provide for payment of property loss or casualty claims or
26 disability insurance claims against contractors of this state with the
27 approval of the joint legislative budget committee. With respect to
28 insurance, self-insurance or risk retention pools for contractors licensed
29 and contracted to do work for this state, the coverage afforded applies with
30 respect to the conduct of the business entity of that contractor. The pool
31 is available to all contractors regardless of the amount that the state
32 contracted work bears in relation to the amount of nonstate contracted work.
33 The contractor shall be terminated from the pool if the contractor ceases to
34 be a state contractor.

35 E. The department of administration may determine, in the best
36 interests of the state, that state self-insurance is necessary or desirable
37 and, if that decision is made, shall provide for state self-insurance for
38 losses arising out of state property, liability or workers' compensation
39 claims prescribed by subsection A of this section. If the department of
40 administration provides state self-insurance, such coverage shall be excess
41 over any other valid and collectible insurance. The director of the
42 department of administration may impose on state departments, agencies,
43 boards and commissions a deductible of not more than ten thousand dollars per
44 loss that arises out of a property, liability or workers' compensation loss

1 pursuant to this subsection. Deductible amounts established by the director
2 shall be subject to annual review by the joint legislative budget committee.

3 F. In carrying out the provisions of this chapter, the department of
4 administration shall establish and provide the state with some or all of the
5 necessary risk management services, or shall contract for risk management
6 services pursuant to chapter 23 of this title, as the director of the
7 department of administration deems necessary in the best interest of the
8 state, and may, in addition to other specifications of such coverage as
9 deemed necessary, determine self-insurance to be established. The provisions
10 of chapter 23 of this title shall not apply to the department of
11 administration's procurement of insurance to cover losses arising out of
12 state property or liability claims prescribed in subsections A and D of this
13 section or excess loss insurance for the state's workers' compensation
14 liability for individual or aggregate claims, or both, in such amounts and at
15 such primary retention levels as the department of administration deems in
16 the best interest of the state. In purchasing insurance to cover losses
17 arising out of state property or liability claims prescribed by subsection A
18 of this section, the department of administration is not subject to the
19 provisions of title 20, chapter 2, article 5.

20 G. No successful bidder for risk management services pursuant to this
21 section shall be entitled to receive directly or indirectly any sales
22 commission, contingent commission, excess profit commission, or other
23 commissions, or anything of value, as payment for the risk management
24 services except those amounts received directly from this state as payment
25 for the risk management services.

26 H. The department of administration shall pay for purchased risk
27 management services, premiums for insurance on state property and state
28 liability and workers' compensation pursuant to the provisions of this
29 chapter.

30 I. A state officer, agent or employee acting in good faith, without
31 wanton disregard of his statutory duties and under the authority of an
32 enactment that is subsequently declared to be unconstitutional, invalid or
33 inapplicable is not personally liable for an injury or damage caused thereby
34 except to the extent that he would have been personally liable had the
35 enactment been constitutional, valid and applicable.

36 J. A state officer, agent or employee, except as otherwise provided by
37 statute, is not personally liable for an injury or damage resulting from his
38 act or omission in a public official capacity where the act or omission was
39 the result of the exercise of the discretion vested in him if the exercise of
40 the discretion was done in good faith without wanton disregard of his
41 statutory duties.

42 K. The state and its departments, agencies, boards and commissions are
43 immune from liability for losses arising out of a judgment for willful and
44 wanton conduct resulting in punitive or exemplary damages.

1 L. The following exclusions shall apply to subsections A, B and E of
2 this section:

3 1. Losses against this state and its departments, agencies, boards and
4 commissions that arise out of and are directly attributable to an act or
5 omission determined by a court to be a felony by a person who is provided
6 coverage pursuant to this article unless the state knew of the person's
7 propensity for that action, except those acts arising out of the operation or
8 use of a motor vehicle.

9 2. Losses arising out of contractual breaches.

10 M. If self-insurance coverage is determined to exist, the attorney
11 general, with funds provided by the department of administration, shall
12 provide for the defense, either through his office or by appointment of
13 outside legal counsel, of the state and its departments, agencies, boards and
14 commissions and all officers, agents and employees thereof and such others as
15 are insured by the department of administration for or on account of their
16 acts or omissions covered pursuant to this chapter. All state departments,
17 agencies, boards and commissions, all officers, agents and employees thereof
18 and such others as are insured by the department of administration shall
19 cooperate fully with the attorney general and department of administration in
20 the defense of claims arising pursuant to this chapter.

21 N. A claim for liability damages made pursuant to this chapter may be
22 settled and payment made up to the amount of twenty-five thousand dollars or
23 such higher limit as may be established by the joint legislative budget
24 committee with the approval of the director of the department of
25 administration. A claim over the amount of twenty-five thousand dollars up
26 to fifty thousand dollars or such higher limit as may be established by the
27 joint legislative budget committee may be settled and payment made with the
28 approval of the director of the department of administration and the attorney
29 general. ~~THE APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION,~~
30 ~~THE ATTORNEY GENERAL AND THE JOINT LEGISLATIVE BUDGET COMMITTEE IS REQUIRED~~
31 ~~TO SETTLE AND PAY~~ any claim over the amount of fifty thousand dollars or such
32 higher limit as may be established by the joint legislative budget committee
33 ~~may be settled and payment made with the approval of the director of the~~
34 ~~department of administration, the attorney general and the joint legislative~~
35 ~~budget committee.~~ If it is in the best interest of this state, the joint
36 legislative budget committee may establish higher settlement
37 limits. ~~PURSUANT TO THE AUTHORITY GRANTED, THE DEPARTMENT OF ADMINISTRATION,~~
38 ~~THE ATTORNEY GENERAL AND THE JOINT LEGISLATIVE BUDGET COMMITTEE SHALL APPROVE~~
39 ~~any settlements, INCLUDING ANY SETTLEMENT BY WAY OF A CONSENT DECREE,~~
40 involving amounts in excess of fifty thousand dollars or such higher limit as
41 may be established by the joint legislative budget committee ~~shall be~~
42 ~~approved by the department of administration, the attorney general and the~~
43 ~~joint legislative budget committee pursuant to the authority granted.~~ The
44 settlement of liability claims shall be solely the authority of the
45 department of administration, the attorney general and the joint legislative

1 budget committee. No state department, agency, board or commission or any
2 officer, agent or employee of this state may voluntarily make any payment,
3 assume any obligation, incur any expense or maintain the individual right of
4 consent for liability claims made pursuant to this chapter except as provided
5 by this section.

6 0. Neither the authority provided by this section to insure, nor the
7 exercise of such authority, shall:

8 1. Impose any liability on this state or the departments, agencies,
9 boards and commissions or any officers, agents and employees of this state
10 unless such liability otherwise exists.

11 2. Impair any defense this state or the departments, agencies, boards
12 and commissions or any officers, agents and employees of this state otherwise
13 may have.

14 P. The department of administration shall pay, on behalf of any state
15 officer, agent or employee, any damages, excluding punitive damages, for
16 which the officer, agent or employee becomes legally responsible if the acts
17 or omissions resulting in liability were within the officer's, agent's or
18 employee's course and scope of employment. The department of administration
19 may pay for all damages however designated which the officer, agent or
20 employee becomes legally responsible for if the acts or omissions resulting
21 in liability are determined by the director of the department of
22 administration to be within the person's course and scope of employment.

23 Q. The department of administration shall adopt such rules as are
24 deemed necessary to carry out, implement and limit the provisions of this
25 chapter.

26 R. For purposes of determining whether a state officer, agent or
27 employee is entitled to coverage under this chapter, "within the course and
28 scope of employment or authorization" means:

29 1. The acts or omissions that the state officer, agent or employee is
30 employed or authorized to perform.

31 2. The acts or omissions of the state officer, agent or employee occur
32 substantially within the authorized time and space limit.

33 3. The acts or omissions are activated at least in part by a purpose
34 to serve this state or its departments, agencies, boards or commissions.

35 S. To the extent it is determined necessary and in the best interest
36 of this state, the department of administration may obtain design and
37 construction insurance or provide for self-insurance against property damage
38 caused by this state, its departments, agencies, boards and commissions and
39 all officers and employees of this state in connection with the construction
40 of public works projects. Workers' compensation liability insurance may be
41 purchased to cover both general contractors and subcontractors doing work on
42 a specific contracted work site. The department may include in its annual
43 budget request, pursuant to section 41-622, subsection D, the cost of the
44 insurance purchased or provided. In connection with the construction of
45 public works projects, the department of administration may also use an

1 owner-controlled or wrap-up insurance program if all of the following
2 conditions are met:

3 1. The total cost of the project is over fifty million dollars.
4 2. The program maintains completed operations coverage for a term
5 during which coverage is reasonably commercially available as determined by
6 the director of the department of insurance, but in no event for less than
7 three years.
8 3. Bid specifications clearly specify for all bidders the insurance
9 coverage provided under the program and the minimum safety requirements that
10 shall be met.
11 4. The program does not prohibit a contractor or subcontractor from
12 purchasing any additional insurance coverage that a contractor believes is
13 necessary for protection from any liability arising out of the contract. The
14 cost of the additional insurance shall not be passed through to this state on
15 a contract bid.
16 5. The program does not include surety insurance.

17 ~~6.~~ T. The state may purchase an owner-controlled or wrap-up policy
18 that has a deductible or self-insured retention as long as the deductible or
19 self-insured retention does not exceed one million dollars.

20 ~~I.~~ U. For purposes of ~~subsection~~ SUBSECTIONS S AND T of this section:
21 1. "Owner-controlled or wrap-up insurance" means a series of insurance
22 policies issued to cover this state and all of the contractors,
23 subcontractors, architects and engineers on a specified contracted work site
24 for purposes of general liability, property damage and workers' compensation.
25 2. "Specific contracted work site" means construction being performed
26 at one site or a series of contiguous sites separated only by a street,
27 roadway, waterway or railroad right-of-way, or along a continuous system for
28 the provision of water and power.