Chapter 17

INSURANCE

State law in New Mexico requires municipalities to have certain types of insurance coverage through the purchase of insurance or by self-insuring their losses. These include tort liability, real property loss or damage, employee medical and hospital expense and Workers' Compensation coverage as well as employee fiduciary or surety bonds. New Mexico municipalities are not permitted to go "bare" (without) as other states have permitted.

INSURANCE PROGRAM REQUIREMENTS

Each municipality should develop an insurance program which will enable it to:

1. Identify risk of financial loss to determine the areas of need for an insurance program.
2. Develop a set of specifications for coverage.
3. Determine if the municipality wants to use a commercial insurance carrier or to self-insure risks, either individually or in a group like the New Mexico Self Insurers’ Fund, or a combination of the two as limited by law.
4. Bid insurance if seeking commercial insurance on the open market following the guidelines set in the Procurement Code (See Chapter 16 - Procurement).
5. Establish a loss control and safety program to restrict financial losses.
6. Establish procedures for handling claims.

TYPES OF COVERAGE

1. Tort Claims Act (§§ 41-4-1 through 41-4-26)

   A tort claim is a civil law action in which the claimant(s) sue(s) for payment of monetary damages for personal injury or death and/or property damage resulting from an alleged wrongful act or omission on the part of the defendant(s). Such tort claims name a municipality, its officer(s) and/or its employee(s) as defendant(s), and ask the court to make the municipality pay a given amount of money to the claimant(s).

   Traditionally, state and local governments could not be sued for most actions or omissions because of their governmental status (called "sovereign immunity"). However, in recent times, much of this immunity from tort claims suits has been removed by legislation or court decisions. Under New Mexico's Tort Claims Act:

   a. Services are limited and immunity is waived in some areas: vehicles, aircraft, streets, utilities, public grounds and buildings, airports, hospitals, health care services and law enforcement personnel; and
b. The limitations on claims recovery are: $200,000 for real property damage arising out of a single occurrence; $300,000 for all past and future medical and medically-related expenses arising out of a single occurrence; $400,000 to any person for any number of claims other than property damage and medical or medically-related expenses arising out of a single occurrence; and $750,000 for all claims other than medical or medically-related expenses arising out of a single occurrence; and

c. The statutes prescribe conditions of liability, including time limits on filing claims, filing procedures and notice of claim requirements.

Municipalities are required to cover tort liability through the purchase of insurance or by self-insuring. However, for some items under the Tort Claims Act, the Local Public Body Liability Fund of Risk Management Division is required to provide coverage for all risks which are commercially uninsurable or insurable only at prohibitive cost.

2. Municipal real property damage or loss (§ 13-5-3A)
Municipalities are required to purchase insurance for public buildings at not less than 80% of replacement cost or actual cash value for loss or damage by fire, hail, windstorm, smoke, explosion, riot or civil commotion.

3. Other municipal real property and personal property damage or loss (§ 13-5-3B)
Municipalities are not required to, but may, purchase insurance or self insure, or a combination of both, to do the following:

a. Repair or replace buildings damaged by other than causes in paragraph 2.

b. Repair or replace personal property damaged or lost through any peril.

c. Replace stolen personal property.

4. Municipal automobile insurance
a. The state Mandatory Financial Responsibility Act (§§ 66-5-201 through 66-5-239) exempts municipalities from mandatory liability coverage for bodily injury or death and property damage in order to register their vehicles. However, insurance or self-insurance coverage is highly advisable because of the waiver of Tort Claims immunity for accidents involving municipal vehicles.

b. Physical damage insurance should cover all municipal vehicles that have a high value and whose replacement would cause a financial hardship.

5. Fiduciary or surety bonds (§ 3-10-2)
For the care and disposition of municipal funds in the employee’s custody and for the faithful discharge of the employee’s duties, the governing body of the municipality shall require a corporate surety bond from the treasurer, the police officer and any other employee it designates. In lieu of individual corporate surety bonds, the governing body may secure a blanket corporate surety bond. The municipality shall pay for the surety bond.
6. Crime insurance
   Municipalities should purchase insurance against losses resulting from burglary or robbery of municipal employees who are custodians of municipal funds.

7. Inland Marine insurance lines
   Municipalities may purchase insurance from financial loss due to damage to valuable equipment such as radios, radar units, photography equipment, valuable papers, works of art, and contractor's equipment (other than licensed road vehicles) such as tractors, bulldozers and road graders.

8. Electronic Data Processing insurance
   Municipalities may purchase insurance to cover losses related to electronic data processing equipment. This insurance may cover both hardware and software.

INSURANCE FOR FEDERAL CLAIMS
Municipalities with a Police Department should purchase insurance to protect the municipality and its police officers against claims for violation of the civil rights of individuals who interact with the Department.

Municipalities should also purchase coverage for alleged violation of the civil rights of citizens or employees of the municipality.

INSURANCE ON EMPLOYEES
Municipalities must furnish certain types of insurance such as Worker's Compensation and Unemployment Compensation (See Chapter 24 - Personnel) and must offer employee group coverage for medical and hospital, disability and/or life insurance, whether or not the employer pays a portion of the premium (See Chapter 15 - Payroll).

In addition, a municipality may wish to insure against employee dishonesty, losses on the premises and losses away from the premises.