CHAPTER 308

HOUSE BILL 2857

AN ACT

AMENDING SECTIONS 41-621, 41-622 AND 41-1375, ARIZONA REVISED STATUTES; REPEALING SECTION 41-1506.02, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 41-1506.02; APPROPRIATING MONIES; RELATING TO IMPLEMENTATION OF BUDGETARY FUND REVISIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-621, Arizona Revised Statutes, is amended to read:

41-621. Purchase of insurance; coverage; limitations; exclusions; definitions

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

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

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

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

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

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

6. Workers' compensation and employers' liability insurance.

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

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

9. ACTUAL OR SUSPECTED DATA BREACHES, SECURITY SYSTEM BREACHES OR SECURITY INCIDENTS FOR SELECT AGENCIES, BOARDS AND COMMISSIONS.

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

1. The board shall consist of three members appointed by the director of the department of administration, at least one of whom shall be a foster parent, one member appointed by the director of the department of economic security, one member appointed by the director of the department of child safety, one member appointed by the director of the state department of corrections, and one member appointed by the administrative director of the courts.

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

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

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

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

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

C. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F of this section for the professional liability of individual physicians and psychiatrists who provide services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible for each loss that arises out of a professional liability claim pursuant to this
subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

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

E. The department of administration may determine, in the best interests of this state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims or for losses arising out of actual or suspected data breaches, security system breaches or security incidents prescribed by subsection A of this section. If the department of administration provides state self-insurance, such coverage shall be excess over any other valid and collectible insurance. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible for each loss that arises out of a property, liability or workers' compensation loss, actual or suspected data breach, security system breach or security incident pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

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

G. A successful bidder for risk management services pursuant to 
this section is not entitled to receive directly or indirectly any sales 
commission, contingent commission, excess profit commission, or other 
commissions, or anything of value, as payment for the risk management 
services except those amounts received directly from this state as payment 
for the risk management services.

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

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

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

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

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

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

2. Losses arising out of contractual breaches.

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

N. A claim for liability damages made pursuant to this chapter may
be settled and payment made up to the amount of $25,000 or such higher
limit as may be established by the joint legislative budget committee with
the approval of the director of the department of administration. A claim
over the amount of $25,000 up to $50,000 or such higher limit as may be
established by the joint legislative budget committee may be settled and
payment made with the approval of the director of the department of
administration and the attorney general. Any claim over the amount of
$50,000 or such higher limit as may be established by the joint
legislative budget committee may be settled and payment made with the
approval of the director of the department of administration, the attorney
general and the joint legislative budget committee. If it is in the best
interest of this state, the joint legislative budget committee may
establish higher settlement limits. Any settlements involving amounts in
excess of $50,000 or such higher limit as may be established by the joint
legislative budget committee shall be approved by the department of
administration, the attorney general and the joint legislative budget
committee pursuant to the authority granted. The settlement of liability
claims shall be solely the authority of the department of administration,
the attorney general and the joint legislative budget committee. No state
department, agency, board or commission or any officer, agent or employee
of this state may voluntarily make any payment, assume any obligation,
incur any expense or maintain the individual right of consent for
liability claims made pursuant to this chapter except as provided by this
section.

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

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

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

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

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

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

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

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

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

S. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be purchased to cover both general contractors and subcontractors doing work on a specific contracted worksite. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over $50,000,000.

2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance and financial institutions, but in no event for less than three years.

3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.

4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.

5. The program does not include surety insurance.

T. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed $1,000,000.
V. U. Notwithstanding any other statute the department of administration may:
1. Limit the liability of a person who contracts to provide goods, software or other services to this state.
2. Allow the person to disclaim incidental or consequential damages.
3. Indemnify or hold harmless any party to the contract.

V. For the purposes of subsections S and T of this section:
1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted worksite for purposes of general liability, property damage and workers' compensation.
2. "Specific contracted worksite" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision of water and power.

W. FOR THE PURPOSES OF THIS SECTION, "BREACH", "SECURITY SYSTEM BREACH" AND "SECURITY INCIDENT" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 18-551.

Sec. 2. Section 41-622, Arizona Revised Statutes, is amended to read:

41-622. Risk management revolving fund; construction insurance fund; cyber risk insurance fund; self-insured losses and administrative costs; budget requests
A. THE risk management revolving fund, and THE construction insurance fund AND THE CYBER RISK INSURANCE FUND are established in the department of administration for the purchase of insurance, risk management services including loss prevention services, payment of self-insured losses pursuant to section 41-621, subsections A, B, C, D and E and administrative costs necessary to carry out risk management services prescribed by section 41-621. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to the provisions of this chapter.
B. The risk management revolving fund in the department of administration shall exclude any property loss arising from damage due to mechanical or electrical breakdown, ordinary wear and tear or obsolescence, nonserviceability, mysterious disappearance or inventory shortage. Mysterious disappearance shall DOES not be construed to include a loss if there is a reasonable presumption of theft. The department of administration, subject to chapter 23 of this title, may advance or disburse monies to contractors who rebuild state property as a result of self-insured losses or to persons who supply goods or services in
replacing self-insured losses. The department of administration shall pay
for claims processing costs, including adjusting costs, legal defense
costs and attorney fees, for any portion of claims falling within state
self-insurance coverage pursuant to the provisions of this chapter.

C. To qualify for payment for loss by theft or burglary of
state-owned personal property, an agency, department, board or commission
must show evidence of forcible entry or that threat of violence was used
in the taking of the property or there must be a reasonable presumption of

D. The department of administration shall present to the
legislature not later than September 1 of each year, in accordance with
the provisions of section 35-113, a budget request based on the actuarial
needs for liability losses, workers' compensation liability losses,
property losses, REPLENISHMENT OF THE CYBER RISK INSURANCE FUND and risk
management administrative costs. The budget request shall be broken down
to reflect the amount of monies to be charged to each of the state
departments, agencies, boards and commissions and any others insured under
this chapter. Any state department, agency, board or commission that has
an amount for insurance included in its appropriation, whether
specifically stated or not, and any state department, agency, board or
commission or others insured under this chapter that receive funds other
than those appropriated shall be billed for the proportionate share of the
charges for insurance or self-insurance by the department of
administration. In collecting the agency billings for risk management
charges, the director of the department of administration may transfer the
entire amount of the billing for appropriated insurance from the agency
account into the fund designated in subsection A of this section at the
start of the fiscal year or in periodic payments during the fiscal year if
necessitated by cash flow restrictions. Those entities or persons insured
under the provisions of this chapter that are not state agencies,
departments, boards, commissions or employees or that do not receive
funding from state sources shall pay annually the amount required by risk
management to the risk management revolving fund or construction insurance
fund before the coverage continues for existing claims or begins for new
claims made. The construction insurance fund shall receive monies
necessary to pay the cost of purchasing insurance, providing
self-insurance or administering the fund as authorized by section 41-621,
subsection S from each capital construction project budget at rates
established by the department of administration and reviewed by the joint
committee on capital review. These amounts shall be included in the
budget request. All monies received from all billings shall be deposited
in the funds as identified in subsection A of this section.

E. All monies recovered by the state pursuant to litigation,
recovery, salvage value of damaged property, proportionate share monies
from any other existing state funds, or otherwise, for damages relating to
either a liability, property or workers’ compensation loss for which
monies from the risk management revolving fund or construction insurance
fund have been or will be paid shall be deposited in the respective fund.

F. If a revolving fund is projected to be exhausted while the
legislature is in session, a special appropriation may be requested by the
department of administration for monies to meet the needs of the funds.
If the funds are exhausted at a time when the legislature is not in
session, any final judgment shall accrue interest and shall be payable
upon ON appropriation in the next succeeding regular session of the
legislature. Interest on any judgment against this state paid for out of
the risk management revolving fund OR THE CYBER RISK INSURANCE FUND,
REGARDLESS OF WHETHER THE FUNDS ARE SELF-INSURED OR FUNDED BY EXCESS
INSURANCE, shall accrue at the average yield offered by United States
treasury bills during the course of the appeal and shall be paid in
accordance with this section. If the appeal is lost by this state, the
judgment amount plus interest at the rate prescribed in this subsection
shall be paid.

G. All monies deposited in the risk management revolving fund AND
THE CYBER RISK INSURANCE FUND are subject to annual legislative
appropriation to the department of administration for use pursuant to this
section. Monies in the construction insurance fund are continuously
appropriated for the fund purposes. The funds established by subsection A
of this section are exempt from the provisions of section 35-190 relating
to lapsing of appropriations.

H. A ten thousand dollar $10,000 death benefit shall be paid from
the risk management revolving fund to the estate of a deceased volunteer,
who is registered as a volunteer by the agency, board or commission, or to
an employee who is not subject to the provisions of section 38-651.02,
upon ON proof of death while in the course and scope of duties as
prescribed in section 41-621, subsection P for any state agency, board or
commission.

Sec. 3. Section 41-1375, Arizona Revised Statutes, is amended to
read:

41-1375. Ombudsman-citizens aide; term; compensation
A. The office of ombudsman-citizens aide is established.
B. The ombudsman-citizens aide who is appointed and approved under
section 41-1373 shall serve full time and shall be a public officer
subject to the conflict of interest provisions of title 38, chapter 3,
article 8.
C. The term of office of the ombudsman-citizens aide is five years
beginning on the date of appointment. Except as provided in subsection D
of this section, the ombudsman-citizens aide shall not serve more than
three full terms.
D. If the term of the ombudsman-citizens aide expires without the
appointment of a successor, the incumbent ombudsman-citizens aide may
continue in office until either:
   1. A successor is appointed.
   2. The ombudsman-citizens aide is removed from office pursuant to
      subsection E of this section.
E. The ombudsman-citizens aide may be removed from office at any
time by a concurrent resolution approved by two-thirds of the membership
of each house of the legislature, but only for neglect of duty, conviction
of improperly divulging confidential information, misconduct or
disability. The ombudsman-citizens aide may forfeit the office of
ombudsman-citizens aide without legislative action pursuant to section
38-510. If the ombudsman-citizens aide is removed, resigns, dies or
becomes incapacitated, a deputy ombudsman may serve as acting
ombudsman-citizens aide until a new ombudsman-citizens aide is appointed.
F. The ombudsman-citizens aide is eligible to receive compensation
as determined pursuant to section 38-611.
G. The ombudsman-citizens aide may incur, subject to appropriation,
expenses that are necessary to carry out the duties under this chapter
ARTICLE. The legislative council shall fund the expenses of the
ombudsman-citizens aide from the monies appropriated to the council. The
legislative council shall include the expenses as a line item in the
general appropriations act.
Sec. 4. Repeal
Section 41-1506.02, Arizona Revised Statutes, is repealed.
Sec. 5. Title 41, chapter 10, article 1, Arizona Revised Statutes,
is amended by adding a new section 41-1506.02, to read:
41-1506.02. Major events fund; purpose; semiannual report
A. THE MAJOR EVENTS FUND IS ESTABLISHED CONSISTING OF MONIES
APPROPRIATED TO THE FUND BY THE LEGISLATURE AND PRIVATE DONATIONS. THE
AUTHORITY SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY
APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING
TO LAPSING OF APPROPRIATIONS. MONIES IN THE FUND MAY BE USED:
1. TO SUPPORT THE PLANNING AND OPERATION OF THE COMPETITIVE BID
PROCESS FOR MAJOR EVENTS IN COORDINATION WITH THE OFFICE OF TOURISM,
DESTINATION MARKETING ORGANIZATIONS AND LOCAL ORGANIZING COMMITTEES.
2. TO NEGOTIATE AND MAKE GRANTS TO LOCAL ORGANIZING COMMITTEES OR
EQUIVALENT ORGANIZATIONS FOR THE OPERATING COSTS OF MAJOR EVENTS. MONIES
MAY NOT BE USED TO SUPPLANT ROUTINE OPERATING EXPENSES OF ANY POLITICAL
SUBDIVISION OF THIS STATE. THE GRANT FOR AN EVENT MAY NOT BE MORE THAN
TWENTY-FIVE PERCENT OF THE OPERATING EXPENDITURES REQUIRED UNDER THE EVENT
SUPPORT CONTRACT BETWEEN THE HOST ORGANIZATION AND THE LOCAL ORGANIZING
COMMITTEE OR EQUIVALENT ORGANIZATION.
3. FOR OTHER ECONOMIC DEVELOPMENT ACTIVITIES ASSOCIATED WITH MAJOR
EVENT OPERATIONS.
B. Before awarding a grant pursuant to subsection A, paragraph 2 of this section, the authority shall prepare a written statement signed by the chief executive officer that assesses the direct economic impact of the grant and contains a finding that the award of the grant is in the best interest of this state.

C. The authority shall submit a semiannual report to the joint legislative budget committee and the governor’s office of strategic planning and budgeting on or before July 15 and December 15 of each year. Each report shall include, at a minimum, the amount of actual expenditures from the fund by purpose and an expenditure plan for all remaining monies by purpose.

Sec. 6. Unrestricted federal monies; essential government services; retroactivity

A. Any unrestricted federal monies received by this state beginning July 1, 2022 through June 30, 2023 shall be deposited in the state general fund. The monies shall be used to pay essential government services.

B. This section applies retroactively to from and after June 30, 2022.

Sec. 7. Budget stabilization fund; exceptions

Notwithstanding section 35-144, Arizona Revised Statutes:

1. For fiscal years 2022-2023, 2023-2024 and 2024-2025, the legislature is not required to appropriate monies to or transfer monies from the budget stabilization fund.

2. For fiscal year 2022-2023, the budget stabilization fund is not limited to ten percent of the state general fund revenue for the fiscal year and the state treasurer may not transfer any surplus monies from the budget stabilization fund to the state general fund.