



COMPARATIVE COST OF RISK SURVEY

Final Report 571

Prepared by:

Mark Priven
Bickmore Risk Services and Consulting
1831 K Street
Sacramento, CA 85811

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Arizona Department of Transportation
206 South 17th Avenue
Phoenix, Arizona 85007
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16. Abstract The objective of this research was to determine the annual cost of risk to the Arizona Department of Transportation (ADOT) and to compare it with that of other state transportation agencies. ADOT is charged with the responsibility of designing, building, and maintaining the highway system for the state of Arizona. Insurance premiums are a notable portion of ADOT's expenses and have risen significantly over the last decade. The research work began with a determination of ADOT's annual cost of risk. Costs by type of coverage were evaluated and quantified so that the major drivers affecting total cost were easily identified. A survey was developed and distributed to the risk managers of each state, requesting their state's participation in the survey. A summary of ADOT's cost of risk was provided to encourage participation. Information received from the 17 responding DOTs was analyzed and used to make determinations. The report compares four major areas concerning ADOT's loss costs for that of the other state DOTs: the cost of claims, risk control methods, legal environment, and other program cost sources. It is noted that ADOT has a lower than average rate for workers' compensation claims, a higher than average rate for general liability claims, and an average rate for auto liability claims. The report will assist ADOT in comparing Arizona's cost of risk with other responding transportation agencies and in the evaluation of current Arizona practices.			
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SI* (MODERN METRIC) CONVERSION FACTORS

APPROXIMATE CONVERSIONS TO SI UNITS					APPROXIMATE CONVERSIONS FROM SI UNITS				
Symbol	When You Know	Multiply By	To Find	Symbol	Symbol	When You Know	Multiply By	To Find	Symbol
<u>LENGTH</u>					<u>LENGTH</u>				
in	inches	25.4	millimeters	mm	mm	millimeters	0.039	inches	in
ft	feet	0.305	meters	m	m	meters	3.28	feet	ft
yd	yards	0.914	meters	m	m	meters	1.09	yards	yd
mi	miles	1.61	kilometers	km	km	kilometers	0.621	miles	mi
<u>AREA</u>					<u>AREA</u>				
in ²	square inches	645.2	square millimeters	mm ²	mm ²	square millimeters	0.0016	square inches	in ²
ft ²	square feet	0.093	square meters	m ²	m ²	square meters	10.764	square feet	ft ²
yd ²	square yards	0.836	square meters	m ²	m ²	square meters	1.195	square yards	yd ²
ac	acres	0.405	hectares	ha	ha	hectares	2.47	acres	ac
mi ²	square miles	2.59	square kilometers	km ²	km ²	square kilometers	0.386	square miles	mi ²
<u>VOLUME</u>					<u>VOLUME</u>				
fl oz	fluid ounces	29.57	milliliters	mL	mL	milliliters	0.034	fluid ounces	fl oz
gal	gallons	3.785	liters	L	L	liters	0.264	gallons	gal
ft ³	cubic feet	0.028	cubic meters	m ³	m ³	cubic meters	35.315	cubic feet	ft ³
yd ³	cubic yards	0.765	cubic meters	m ³	m ³	cubic meters	1.308	cubic yards	yd ³
NOTE: Volumes greater than 1000L shall be shown in m ³ .									
<u>MASS</u>					<u>MASS</u>				
oz	ounces	28.35	grams	g	g	grams	0.035	ounces	oz
lb	pounds	0.454	kilograms	kg	kg	kilograms	2.205	pounds	lb
T	short tons (2000lb)	0.907	megagrams (or "metric ton")	mg (or "t")	mg (or "t")	megagrams (or "metric ton")	1.102	short tons (2000lb)	T
<u>TEMPERATURE (exact)</u>					<u>TEMPERATURE (exact)</u>				
°F	Fahrenheit temperature	5(F-32)/9 or (F-32)/1.8	Celsius temperature	°C	°C	Celsius temperature	1.8C + 32	Fahrenheit temperature	°F
<u>ILLUMINATION</u>					<u>ILLUMINATION</u>				
fc	foot-candles	10.76	lux	lx	lx	lux	0.0929	foot-candles	fc
fl	foot-Lamberts	3.426	candela/m ²	cd/m ²	cd/m ²	candela/m ²	0.2919	foot-Lamberts	fl
<u>FORCE AND PRESSURE OR STRESS</u>					<u>FORCE AND PRESSURE OR STRESS</u>				
lbf	poundforce	4.45	newtons	N	N	newtons	0.225	poundforce	lbf
lbf/in ²	poundforce per square inch	6.89	kilopascals	kPa	kPa	kilopascals	0.145	poundforce per square inch	lbf/in ²

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Glossary of Acronyms

ADOT	Arizona Department of Transportation
BRS (BRSC)	Bickmore Risk Services and Consulting
OSHA	Occupational Safety & Health Administration
AGRiP	Association of Governmental Risk Pools
AL	Auto Liability
DOT	Department of Transportation
EPA	Environmental Protection Agency
EPL	Employment Practices Liability
GL	General Liability
RC	Risk Control
RMS	Risk Management Section
SIR	Self Insured Retention
WC	Workers' Compensation

Abbreviations – 17 Surveyed States

AK	Alaska
AZ	Arizona
AR	Arkansas
CA	California
HI	Hawaii
IL	Illinois
IA	Iowa
ME	Maine
MI	Michigan
MN	Minnesota
MS	Mississippi
MO	Missouri
OK	Oklahoma
SC	South Carolina
TN	Tennessee
WI	Wisconsin
WY	Wyoming

I. EXECUTIVE SUMMARY

This report presents a comparison of the Arizona Department of Transportation's (ADOT) cost of risk, risk control measures, legal environment and other program information with that of a number of other states' departments of transportation (DOTs).

The information from other states is based on responses to a survey conducted in early 2008 by Bickmore Risk Services and Consulting (BRS) on behalf of ADOT. In order to improve the response rate and to ensure openness with regard to costs, the project made a commitment of confidentiality for all survey data. Therefore, each responding state was assigned a letter code, at random, for use in the tables and graphs of this report.

This report compares four major areas concerning ADOT's loss costs to that of other state DOTs, with 17 states responding to all or part of the survey:

- | | |
|-------------------------|-------------------------------|
| 1. Cost of claims | 3. Legal environment |
| 2. Risk control methods | 4. Other program cost sources |

Each of these cost areas is summarized in an Exhibit section as well as in a more detailed Appendix, each identified by the numbers indicated above.

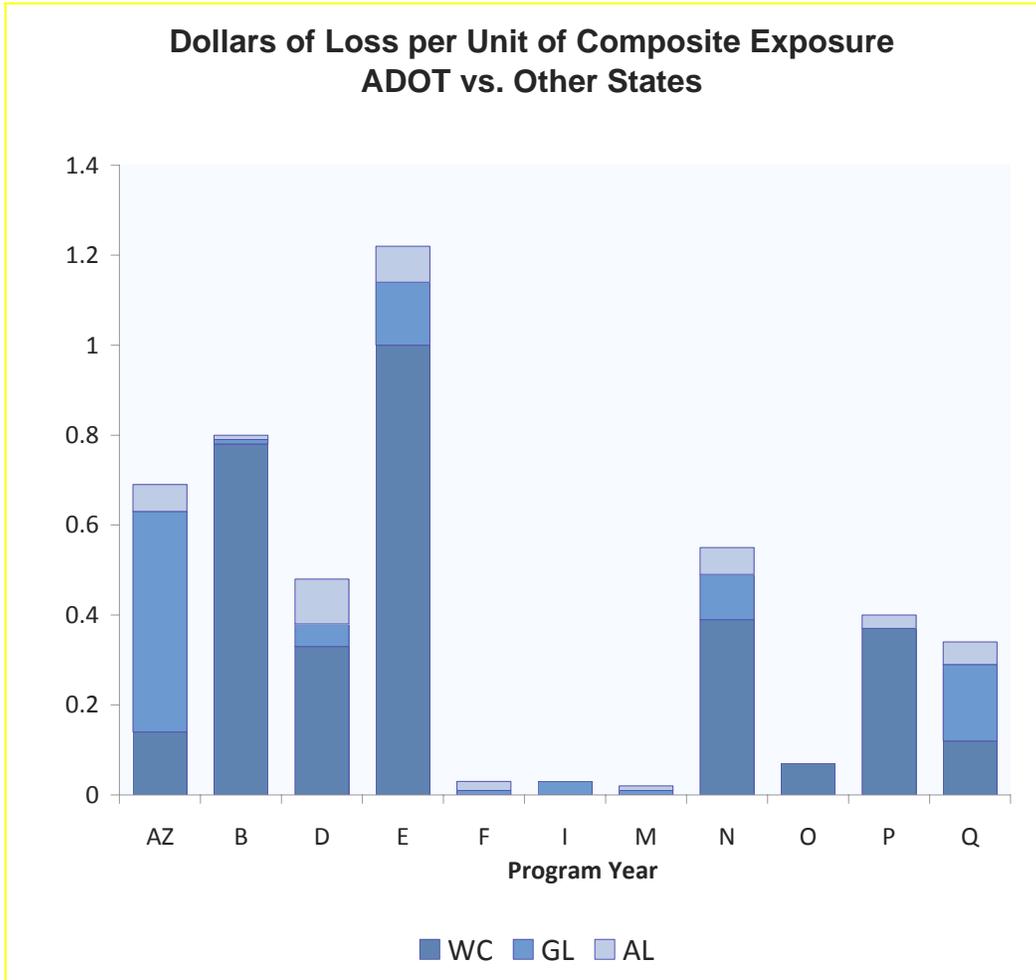
Table 1 summarizes the cost per exposure for workers' compensation, general liability, and auto liability claims for 11 states responding on this question. While ADOT's workers' compensation costs are lower than average, ADOT's general liability claims are higher than those of the other respondents. This can be seen graphically in the figure on the following page, and in greater detail in Exhibit 1 and Appendix 1 of the report.

Table 1

Estimated 2008-09 Claims Cost / Composite Exposure			
State Identifier	WC	GL	AL
AZ	0.14	0.49	0.06
B	0.78	0.01	0.01
D	0.33	0.05	0.10
E	1.00	0.14	0.08
F		0.01	0.02
I		0.03	
M		0.01	0.01
N	0.39	0.10	0.06
O	0.07		
P	0.37		0.03
Q	0.12	0.17	0.05
Average	0.40	0.11	0.05

Key: WC: workers' compensation, GL: general liability, AL: auto liability

Graph 1



Based on the results of the project survey, it is recommended that ADOT examine the cost of general liability claims in particular. It appears that the costs of ADOT’s general liability claims are driving loss costs for the program, and are at a higher rate than other responding departments of transportation.

This research effort has also been able to quantify ADOT’s risk control and legal environment and examine the issues driving costs. Specifically, we found that ADOT utilizes slightly more risk control methods than the average DOT that responded to our survey. We also found that ADOT’s legal environment appears to be less favorable than the average for all respondents.

Lastly, we found that survey respondents identified signage and maintenance as the major issues driving claims costs, which is similar to ADOT’s experience.

II. BACKGROUND

ADOT bears the responsibility of designing, building, and maintaining the highway system for the state of Arizona. The safe movement of people and goods throughout Arizona is dependent on the quality performance of ADOT. The Department strives to fulfill this duty by utilizing all resources available to provide a high level of customer service. In order to ensure that ADOT efficiently utilizes its resources, it has commissioned an analysis of its cost of risk.

The purpose of the study is to provide ADOT with information regarding the cost of risk, as compared to that of other states' DOTs. A cost of risk study, by definition, involves the aggregation of costs associated with several types of risk. This study addresses steps three, four, and five below; BRS has examined the reasonability of the data collected, compared the responses with ADOT's, and drawn some preliminary conclusions.

This "comparison cost of risk" study required a number of sequential steps, as key components of the overall project plan as developed by BRS. In this study, costs are tracked by the type of coverage so that the major drivers affecting total cost can be more easily identified.

The overall project workplan submitted by BRS and approved by ADOT was as follows:

- 1. Determine ADOT's Annual Cost of Risk**
Based on information provided by ADOT, BRS will determine ADOT's annual cost of risk. Costs will be identified by type of coverage and adjusted for cash flow versus ultimate accrued cost.
- 2. Contact Other States**
The next step of the project involves contacting the Departments of Transportation of the other states. In contacting the other DOTs, we will be providing them with ADOT annual cost of risk data and soliciting information from them on their cost of risk, as well as any successful changes that they have implemented in their states.
- 3. Data Analysis**
As information from the other DOTs is collected, BRS will be reviewing the reported information for viability and reasonableness.
- 4. Comparison of Cost of Risk**
BRS will compare ADOT's cost of risk data with the information gathered from the other states. BRS will normalize the information and ensure that the comparison of ADOT's cost of risk and that of the other responding states is a valid comparison.

5. Draw Conclusions and Determine Recommendations

BRS will provide ADOT with conclusions drawn regarding the most effective areas to target for improvement and provide recommendations as to how ADOT can reduce its cost of risk.

6. Submission of Final Report and Four-Page Research Note

A final report and research note documenting the results of the project will be submitted to ADOT, with a presentation of the final report to be made to an audience as designated by ADOT.

III. DISCUSSION OF RESULTS

This section provides a more detailed discussion of the results of the survey and conclusions based on these results.

A. LOSS COSTS

Three “lines” or insurance types – workers’ compensation, general liability, and auto liability – had a sufficient number of responses to compare. Chapter V, the methodology section, provides information on how these losses were put on the same level.

The following table indicates that ADOT has a lower than average rate for workers’ compensation claims, a higher than average rate for general liability claims, and an average rate for auto liability claims.

Table 2

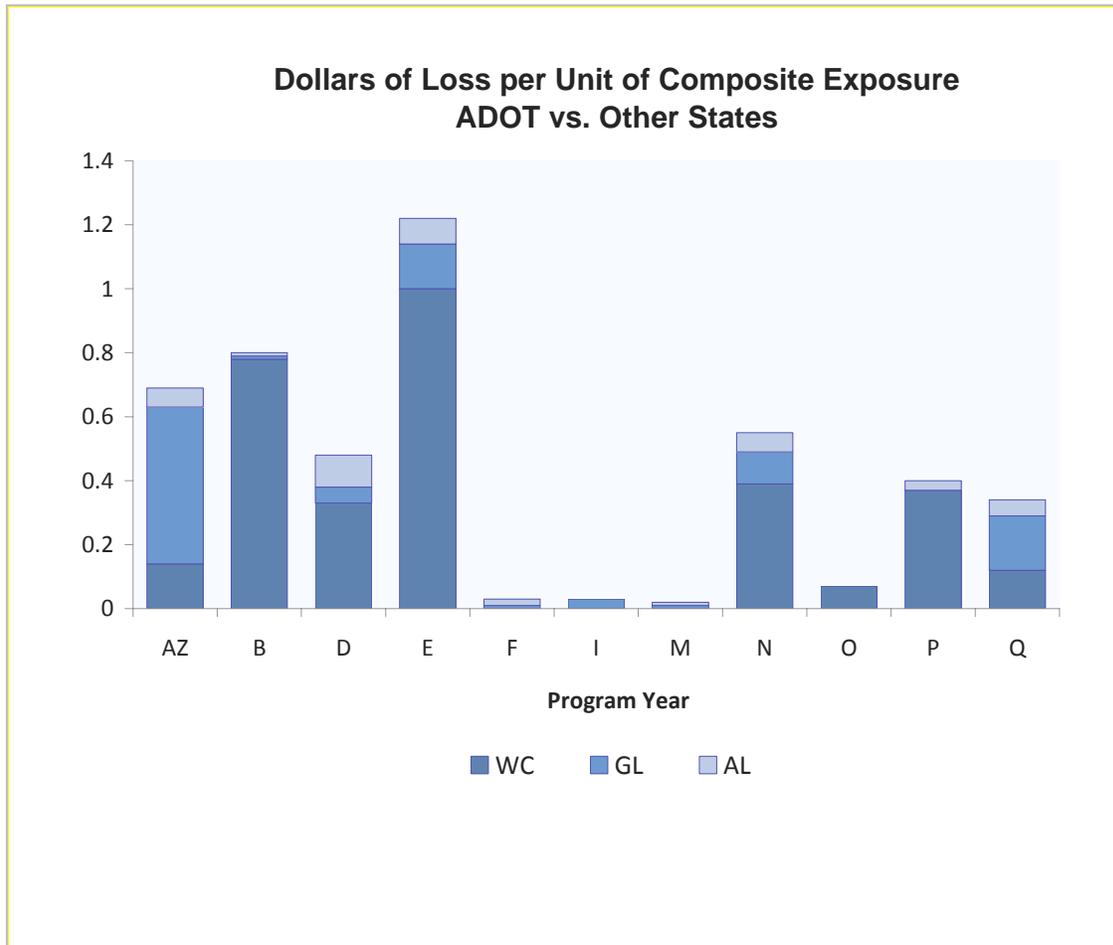
**Estimated 2008-09 Claims
Cost / Composite Exposure**

State Identifier	WC	GL	AL
AZ	0.14	0.49	0.06
B	0.78	0.01	0.01
D	0.33	0.05	0.10
E	1.00	0.14	0.08
F		0.01	0.02
I		0.03	
M		0.01	0.01
N	0.39	0.10	0.06
O	0.07		
P	0.37		0.03
Q	0.12	0.17	0.05
Average	0.40	0.11	0.05

Key: WC: workers’ compensation, GL: general liability, AL: auto liability

Note: The vertical axis in Graph 2 below shows the dollars spent per unit of composite exposure. Composite exposure is a weighted average of population per square mile, vehicle miles per capita, personal income per capita, rural lane miles and urban lane miles. This is shown in further detail in Appendix 5 on Page 58.

Graph 2



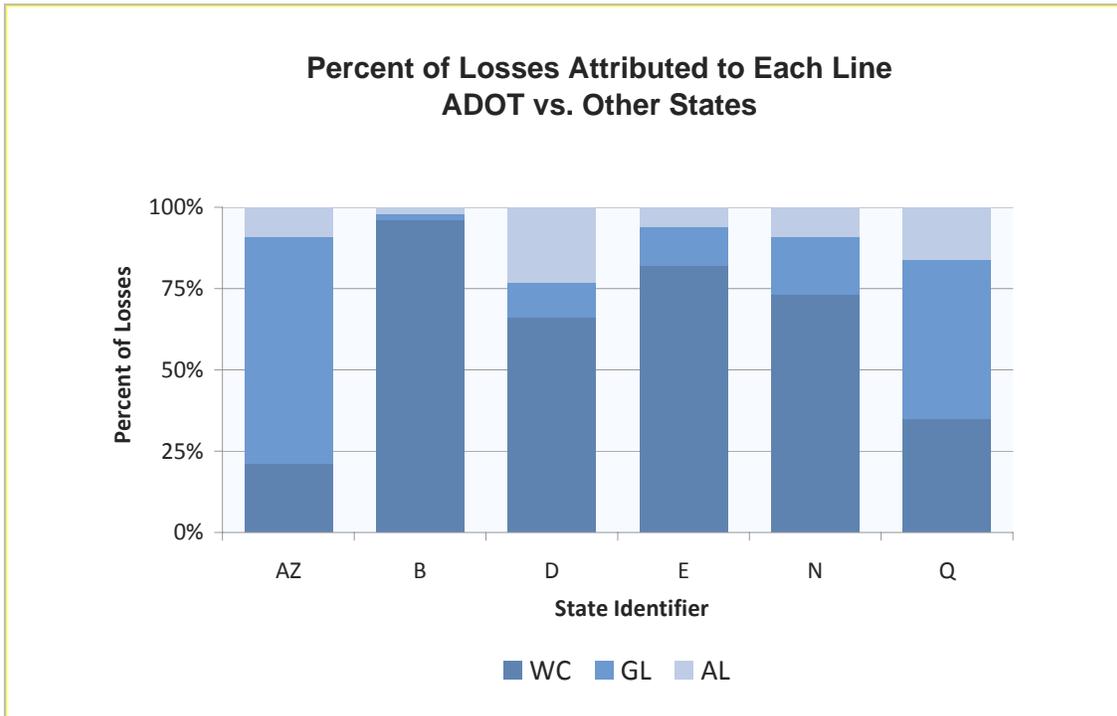
We also examined the percentage that these three lines or insurance types (workers' compensation, general liability, and auto liability) constitute, compared to the sum of these lines. General Liability seems to generate more claims costs for ADOT than for any of the comparative transportation departments. This can be seen in Table 3 and visually in Graph 3.

Table 3
Percent of WC, GL, and AL Estimated Losses for 2008-09 by Line

State Identifier	WC	GL	AL
AZ	0.21	0.70	0.09
B	0.96	0.02	0.02
D	0.66	0.11	0.23
E	0.82	0.12	0.06
N	0.73	0.18	0.09
Q	0.35	0.49	0.16

Key: WC: workers' compensation, GL: general liability, AL: auto liability

Graph 3



We have also compared the results for DOT workers' compensation cost estimates with a study done for the state of Oregon in 2006 which examined relative costs on a

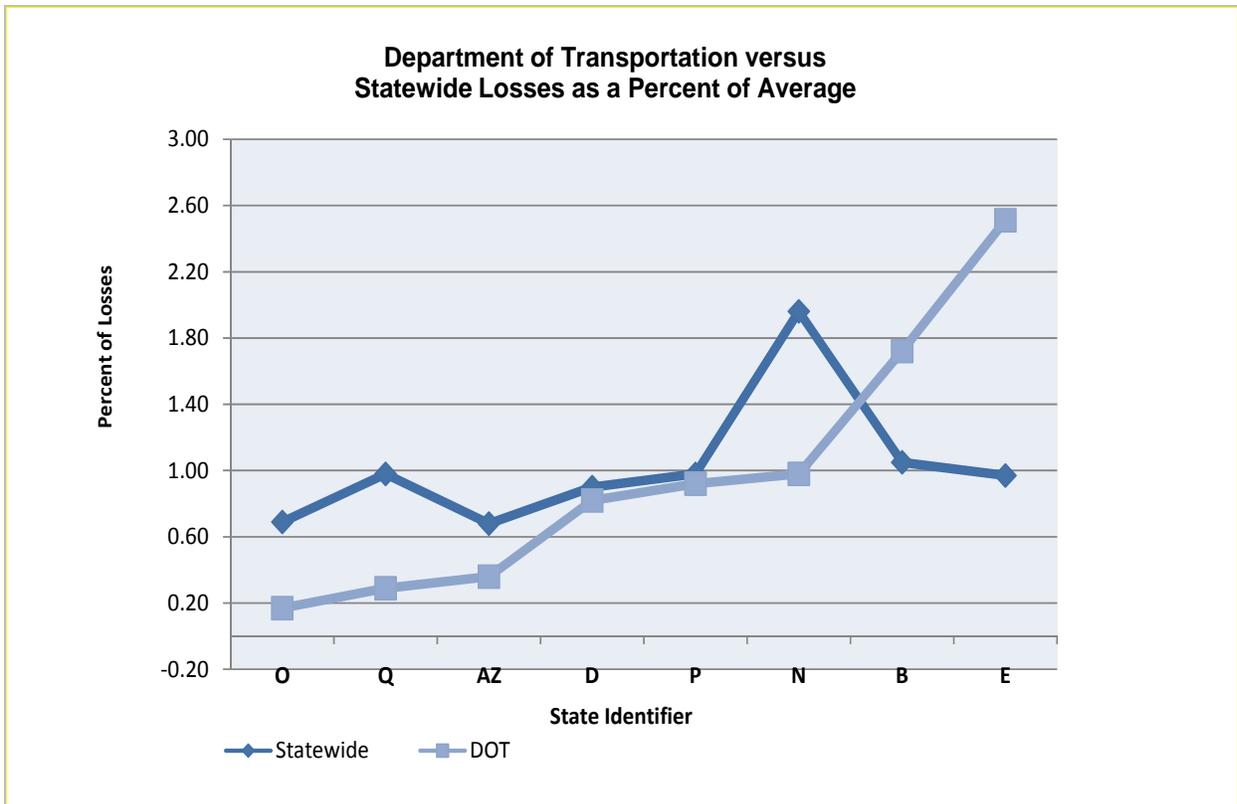
statewide basis. The losses are shown in Table 4 as a percentage of the mean average and are listed from low to high based on the DOT losses estimated for 2008-09. Table 4 and Graph 4 show that on a statewide basis Arizona’s workers’ compensation loss costs tend to be about 68% of the average loss costs of all states. ADOT’s average loss costs are only 36% of the average loss costs of those that participated in this study.

Table 4
Department of Transportation
Statewide Workers’ Compensation Losses as a Percent of Average

State	DOT WC Study	Statewide WC Study
O	17%	69%
Q	29%	98%
AZ	36%	68%
D	82%	90%
P	92%	98%
N	98%	196%
B	172%	105%
E	251%	97%

On a state by state basis there is a positive correlation between the DOT and Oregon studies, but it would appear that the environment within the states is not likely the most significant driver of the differences in loss rates for the DOTs

Graph 4



B. RISK CONTROL METHODS

Table 5 and Graph 5 indicate that ADOT appears to use a fairly average mix of risk control methods, which appear to be effective in controlling workers' compensation costs.

BRS's risk control department provided a list of typical risk management methods and weighted them by effectiveness. Then each DOT was awarded points for the risk management techniques outlined in their survey responses. Finally, these totaled points have had their average set to 1.00 and the total scores were scaled based on this. As can be seen, ADOT is close to the average. Further detail is shown in both Exhibit 2 and Appendix 2 of this report. Not surprisingly, there appears to be a negative correlation between risk control and workers' compensation losses.

Table 5

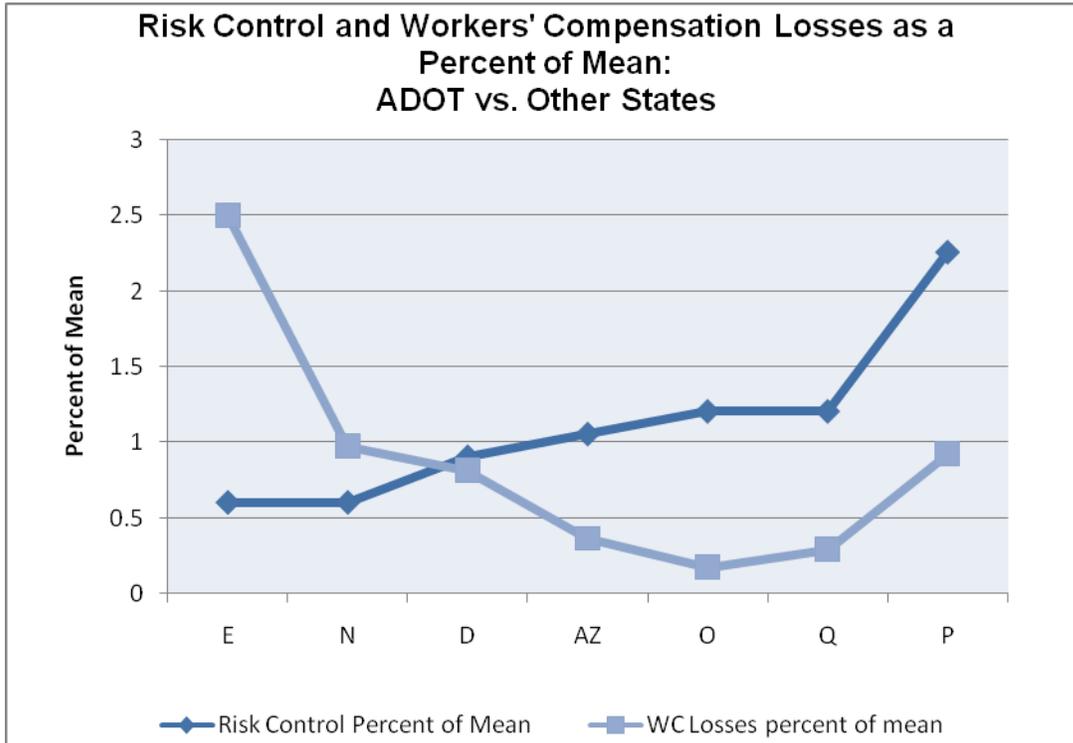
Weighted Risk Control Methods Use

State	Risk Control as a Percent of the Mean	Workers' Compensation Losses as a Percent of the Mean
AZ	1.05	0.36
D	0.90	0.82
E	0.60	2.51
N	0.60	0.98
O	1.21	0.17
P	2.26	0.92
Q	1.21	0.29

Normally one would expect an inverse relationship between risk control effort and workers' compensation costs. In other words, more risk control leads to lower losses.

Graph 5, on the following page, shows that the states surveyed do generally show this inverse relationship: the line representing losses generally declines as the line representing risk control increases.

Graph 5



C. LEGAL ENVIRONMENT

According to our research related to survey responses, the legal environment for ADOT is not as favorable as most of the comparative transportation departments, and the cost of ADOT general liability claims is very much higher than normal.

Table 6 shows a comparison of a weighted legal environment in the responding states. BRS’s legal department provided the listed legal environmental items and weighted them by their impact on liability exposures. Each DOT was then awarded points for the legal environment outlined in their survey responses. Finally the score for each respondent is based on the respondent’s points divided by the average number of points for all respondents combined.

In general, a “Legal Environment” score less than 1.0 indicates an environment that is less friendly to DOTs than average, and a score greater than 1.0 indicates a legal environment that is friendlier to DOTs. Further detail is shown in both Exhibit 3 and Appendix 3 of this report.

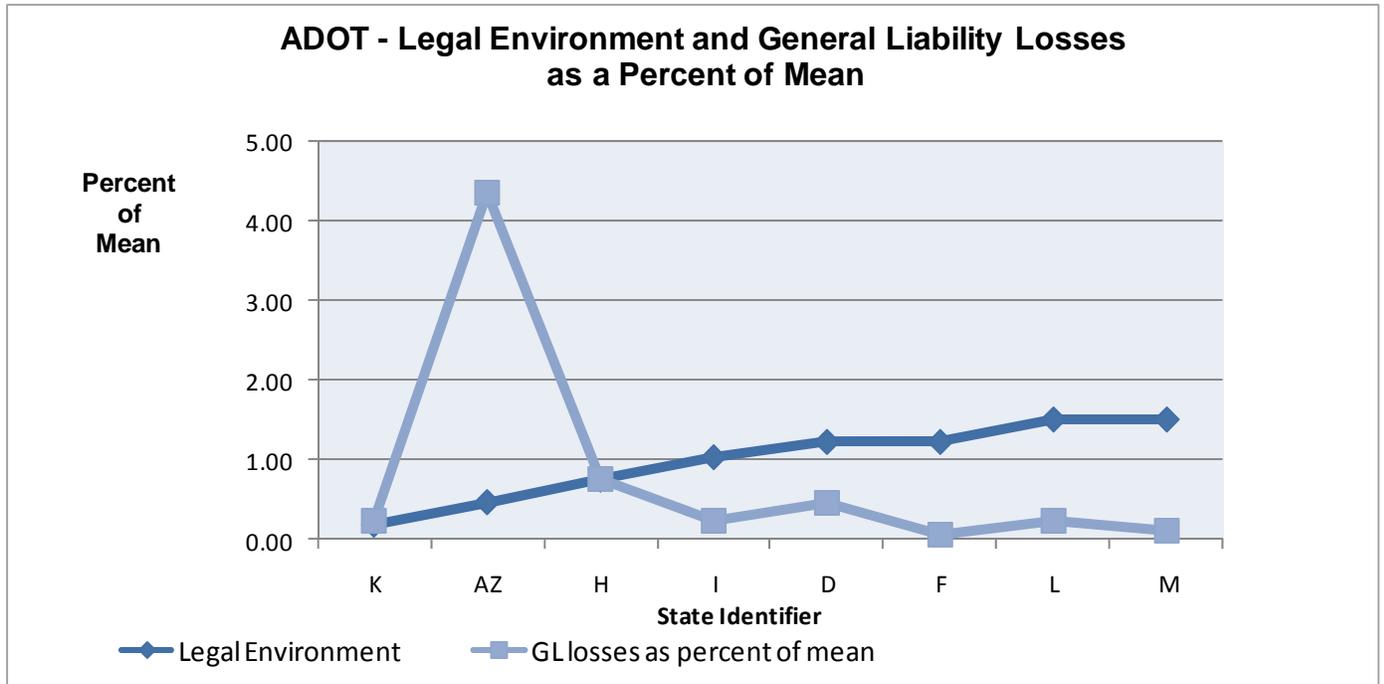
Table 6

Legal Environment and General Liability Losses as a Percent of Mean

State Identifier	Legal Environment as a Percent of the Mean	General Liability as a Percent of the Mean
K	0.19	0.24
AZ	0.47	4.36
H	0.75	0.06
I	1.03	0.24
D	1.22	0.46
F	1.22	0.06
L	1.50	0.24
M	1.50	0.10

Normally one would expect an inverse relationship between legal environment scores and general liability costs. In other words, a friendlier legal environment leads to lower losses. The following graph shows that the states surveyed do generally show this inverse relationship: the line representing losses generally declines as the line representing legal environment increases.

Graph 6



D. COST SOURCES

Signage and maintenance are overwhelmingly considered the critical cost sources for the responding departments of transportation. This is based on survey responses and not on an analysis of claims.

Table 7

Cost Sources

Cost	Responses
Signage	7
Maintenance	10
Design	4
Lighting	1
Legal Costs	1
Tort Claims Act	1
Terrorism	0
Natural Catastrophe	0
Other	3

IV. DESCRIPTION OF THE CURRENT PROGRAM

At the present time, the state of Arizona is self-insured for its workers' compensation and liability programs. The program is self-administered by the Risk Management Section (RMS). Arizona has a self-insured retention of \$7 million for liability.

Property and liability claims have been self-administered since the inception of the program. RMS began administering workers' compensation claims effective January 1, 1991. Prior to that date, these claims were handled by the Arizona State Compensation Fund.

Legal services are provided by the Attorney General's office. The costs of these services are not included in this report.

The current legal climate in Arizona provides for some governmental immunity; however, this is not enforced in a consistent and reliable manner. Public entities such as Arizona spend millions of dollars each year on liability indemnity and legal costs.

A.R.S. Section 12-820.01, Absolute Immunity, of the Arizona Revised Statutes states that a public entity shall not be liable for acts and omissions of its employees constituting any of the following:

- The exercise of a judicial or legislative function.
- The exercise of an administrative function involving the determination of fundamental governmental policy.
- The determination of a fundamental governmental policy involves the exercise of discretion and shall include, but is not limited to:

A determination of whether to seek or whether to provide the resources necessary for any of the following:

- The purchase of equipment
 - The construction or maintenance of facilities
 - The hiring of personnel
 - The provision of governmental services
- A determination of whether and how to spend existing resources, including those allocated for equipment, facilities, and personnel.
 - The licensing and regulation of any profession or occupation.
 - The establishment, implementation, and enforcement of minimum safety standards for light rail transit systems.

According to A.R.S. Section 12-820.02, Qualified Immunity, of the Arizona Revised Statutes, unless a public employee acting within the scope of that public employee's

employment intended to cause injury or was grossly negligent, neither a public entity nor a public employee is liable for the following:

- An injury to the driver of a motor vehicle that is attributable to the violation by the driver of A.R.S. Sections 28-693, 28-1381, or 28-1382.
- The qualified immunity provided in this section applies to a public entity or public employee if the injury or damage was caused by a contractor's employee, or a contractor of a public entity acting within the scope of the contract. The qualified immunity provided in this section does not apply to the contractor.

V. METHODOLOGY

This report is based on data collected for the Arizona Department of Transportation by BRS in the form of a survey. Seventeen state departments of transportation responded: Alaska, Arizona, Arkansas, California, Hawaii, Illinois, Iowa, Maine, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, South Carolina, Tennessee, Wisconsin, and Wyoming. A relatively small number of responses were given to any particular set of questions, adding a degree of uncertainty to the conclusions of this report. However, the responding states are geographically and demographically diverse.

The following sections discuss the methodology employed for each step of the analysis, and the factors involved in the process.

1. Regarding comparisons of cost per exposure (see Exhibit 1 and Appendix 1):
We noted the cost information we received from other state DOTs is not typically on the same basis as that provided for ADOT. Most, but not all, of the cost information is in the form of projected or actual cash flow as opposed to accrual estimates. DOTs provided us with projected cash disbursements during a variety of fiscal years. In addition, different costs are included in these estimates; we consider loss, legal, and claims adjusting to be “all costs.” In addition some programs have SIR limits and others do not. We have made estimates to bring each response to the same year level, be on a cash flow basis, include the same costs, and have an unlimited self-insured retention (SIR), as can be seen on page 1 of Appendices 1 – WC, 1 – GL, and 1 – AL of this report. We did not have sufficient information to quantify the impact of the inclusion or exclusion of excess insurance costs. All of this adds some uncertainty to the conclusions of this report. Exposures were selected based on what would in our experience to track each line, as can be seen in Appendix 5.
2. Regarding Risk Control Methods (see Exhibit 2 and Appendix 2):
A large number of risk control methods were listed in the survey conducted by BRS. BRS’s risk control department listed typical risk control methods and rated their effectiveness on a scale of 1 to 3 (see Appendix 2, page 44). The narratives were then scored for mention of specific risk control methods and the responses were weighted using the scale above. While this scoring was performed by public agency loss control experts, it is subjective and does not reflect the funding amount for each loss control measure nor the effectiveness of implementation. This adds a level of uncertainty to the conclusions.
3. Regarding Legal Environment (see Exhibit 3 and Appendix 3):
Legal environment factors were listed in the survey conducted by BRS. BRS’s risk control department listed typical risk control methods and rated their effectiveness on a scale of 1 to 3 (see Appendix 3, page 54). The DOTs were then scored for mention of specific legal environmental factors and the responses were weighted using the scale above (see Appendix 3, page 45).

4. Regarding Loss Causes (see Exhibit 4 and Appendix 4):

The responses were tallied and are presented without any weights.

5. Regarding Exposures (see Appendix 5):

Exposures were obtained from the United States Department of Transportation, including: Population per Square Mile, Vehicle Miles per Capita, Personal Income per Capita, Rural Lane Miles, and Urban Lane Miles. These were brought to a common level and then differently weighted averages were used as the exposure for each line.

VI. FINDINGS AND CONCLUSIONS

This research effort identified Arizona's annual cost of risk, and compared ADOT's loss costs in four major areas of concern with those of 16 other state DOTs:

1. Cost of claims
2. Risk control methods
3. Legal environment
4. Other program cost sources

The goals were to quantify Arizona's relative costs of risk compared to the range of national costs, and to develop practical recommendations for ADOT to better manage its cost of risk. This project report will assist ADOT in comparing Arizona's cost of risk with other responding transportation agencies, and in the evaluation of current Arizona practices.

Based on the results of the project survey, it is recommended that ADOT examine the cost of general liability claims in particular. It appears that the costs of ADOT's general liability claims are driving loss costs for the program, and are at a higher rate than other responding departments of transportation.

Table 1, on Page 1 of this report, summarizes the cost per exposure for workers' compensation, general liability, and auto liability claims for 11 states responding with that data. While ADOT's workers' compensation costs are lower than average, ADOT's general liability claims are higher than those of the other respondents. This can also be seen in Graph 1 on Page 2, and in greater detail in Exhibit 1 and Appendix 1 of the report.

This research effort has also been able to quantify ADOT's risk control and legal environment, and has examined the issues which are driving costs.

Specifically, we found that ADOT utilizes slightly more risk control methods than the average DOT that responded to our survey. We also found that ADOT's legal environment appears to be less favorable than the average for all respondents. Lastly, we found that survey respondents identified the majority of claims filed as alleging signage and/or maintenance issues, which is similar to ADOT's experience.

EXHIBIT 1 - Cost Comparison

Exhibit I
Page 1

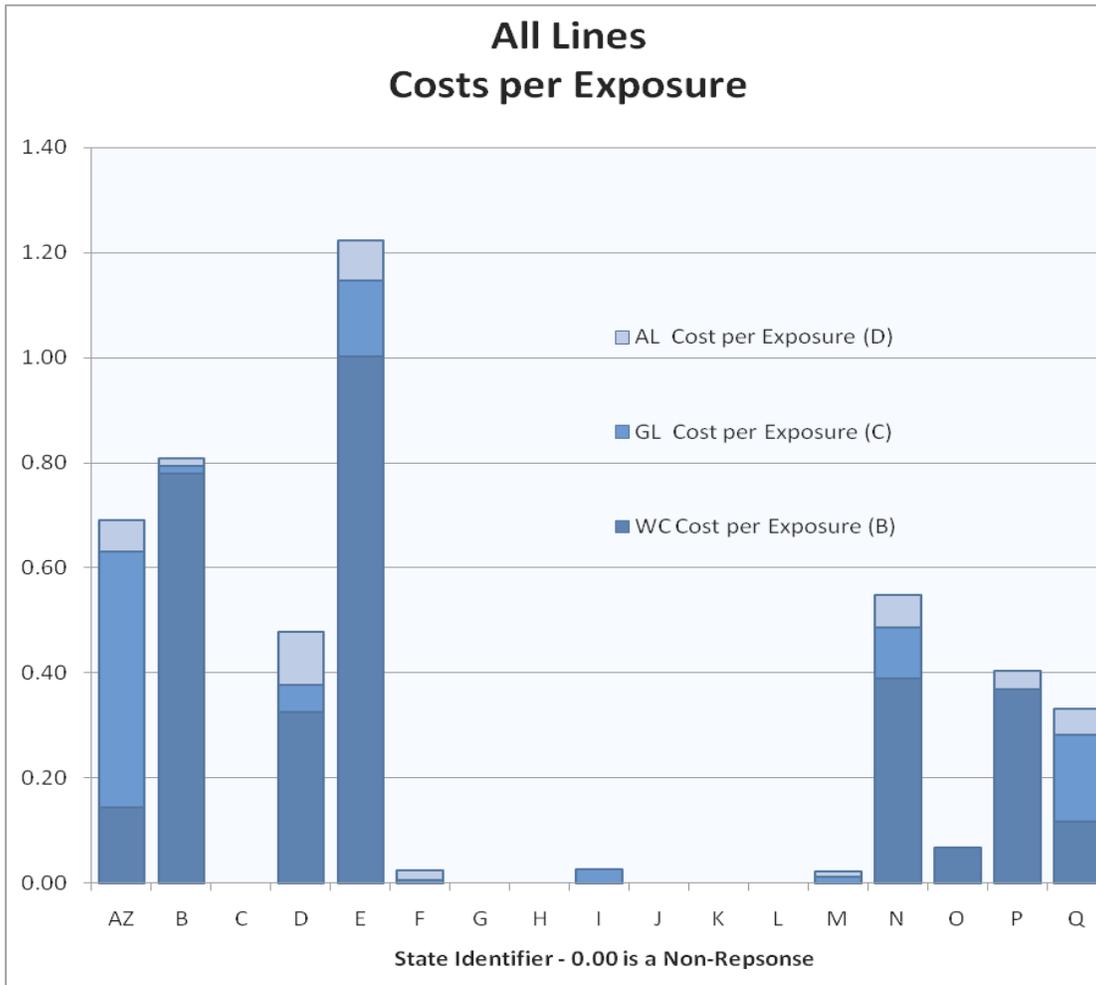
Cost Per Exposure: By Major Line and as a Percent of Line							
ST	Workers Compensa- tion Cost per Exp.	General Liability Cost per Exp.	Auto Liability Cost per Exp.	WC% of Total	GL% of Total	AL% of Total	2008-09 Esti- mated Total Costs From WC, GL, and AL (in 000s)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
AZ	0.14	0.49	0.06	0.21	0.70	0.09	17,324
B	0.78	0.01	0.01	0.96	0.02	0.02	36,523
C							
D	0.33	0.05	0.10	0.66	0.11	0.23	12,506
E	1.00	0.14	0.08	0.82	0.12	0.06	41,769
F		0.01	0.02				
G							
H							
I		0.03					
J							
K							
L							
M		0.01	0.01				
N	0.39	0.10	0.06	0.73	0.18	0.09	8,924
O	0.07						
P	0.37		0.03				
Q	0.12	0.17	0.05	0.35	0.49	0.16	10,756

Notes

- (A) States are given a letter for identification.
- (B) From Appendix 1 - WC, Page 1, Cost/exposure, Item (I)
- (C) From Appendix 1 - GL, Page 1, Cost/exposure, Item (I)
- (D) From Appendix 1 - AL, Page 1, Cost/exposure, Item (I)
- (E) Appendix 1 - WC, Page 1, Item (I)/(I).
- (F) Appendix 1 - GL, Page 1, Item (I)/(I).
- (G) Appendix 1 - AL, Page 1 Item, (I)/(I).
- (H) Summed from WC, GL and AL Appendix 1, Page 1, Item G.

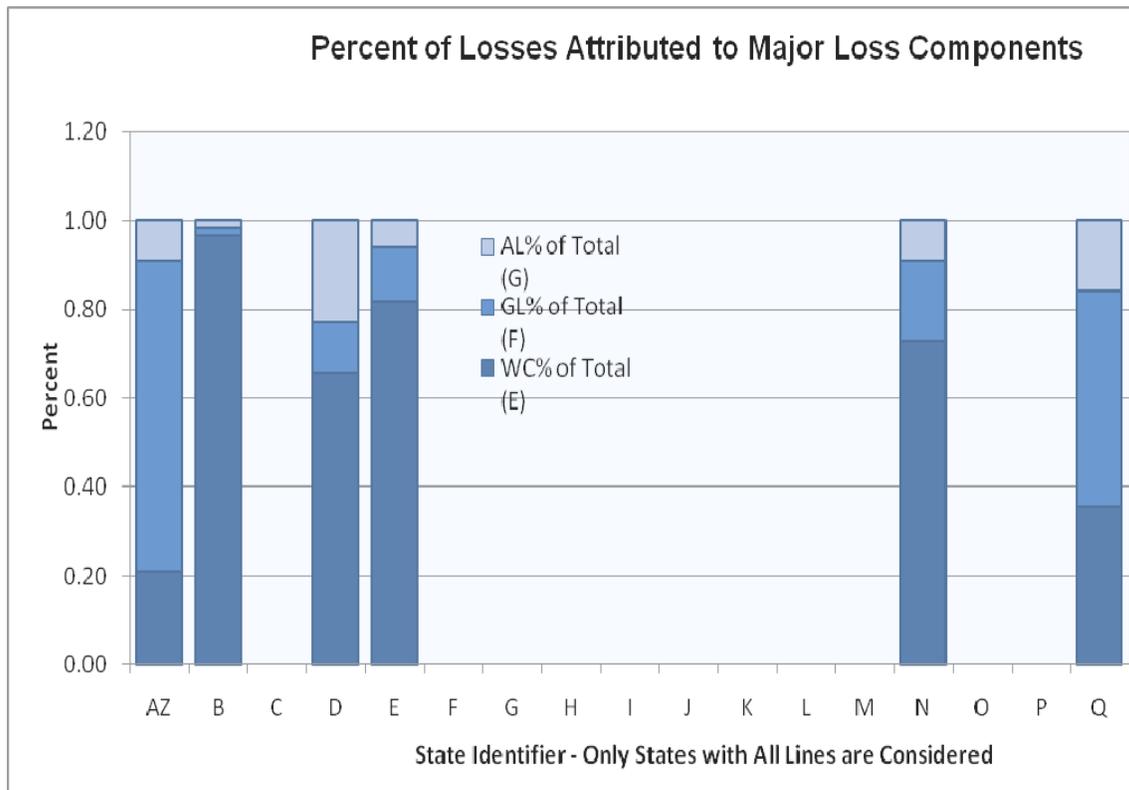
See Appendix 1 for further detail.

Graph 7



Key: WC: workers' compensation, GL: general liability, AL: auto liability

Graph 8



Key: WC: workers' compensation, GL: general liability, AL: auto liability

Exhibit 2 - Risk Control

Exhibit 2
Page 1

Risk Controls - Techniques in Place												
ST	Risk Mngmt.	Engr.	Inspct.	Trning.	Compl.	Prgms.	Invstgt.	Cl.	WC	Ttl.	Risk Mngmt. Scores with 1.00 as Avg.	WC Losses with 1.00 as Avg.
AZ	3	0	0	2	0	0	0	2	0	7.00	1.05	0.36
D	0	0	2	2	0	0	0	0	2	6.00	0.90	0.82
E	0	0	0	0	0	0	0	2	2	4.00	0.60	2.51
H	0	0	0	2	0	2	0	0	0	4.00	0.60	
I	0	0	0	4	0	0	0	0	0	4.00	0.60	
L	0	0	0	4	0	0	0	0	0	4.00	0.60	
M	3	0	2	2	0	0	2	0	0	9.00	1.36	
N	0	0	0	2	0	0	2	0	0	4.00	0.60	0.98
O	3	0	0	0	3	0	0	0	2	8.00	1.21	0.17
P	0	3	2	4	6	0	0	0	0	15.00	2.26	0.92
Q	0	0	0	2	0	0	2	0	4	8.00	1.21	0.29
									average	6.64	1.00	

Notes:

Risk control measures are weighted as shown in Appendix 2.
 Weights have been provided by Bickmore Risk Services Risk Management Department.
 Each risk control item is awarded the number of points in the weight and summed to arrive at the total.
 The last two columns set the averages for all responding states to 1.00 for comparative purposes.

Abbreviations:

ST = State	Risk Mngmt. = Risk Management	Engr. = Engineering	Inspct. = Inspection
Trng = Training	Compl. = Compliance	Prgms. = Programs	Invstgt. = Investigations
Cl. = Control	WC = Workers' Compensation	Ttl. = Totals	Avg. = Average

Graph 9

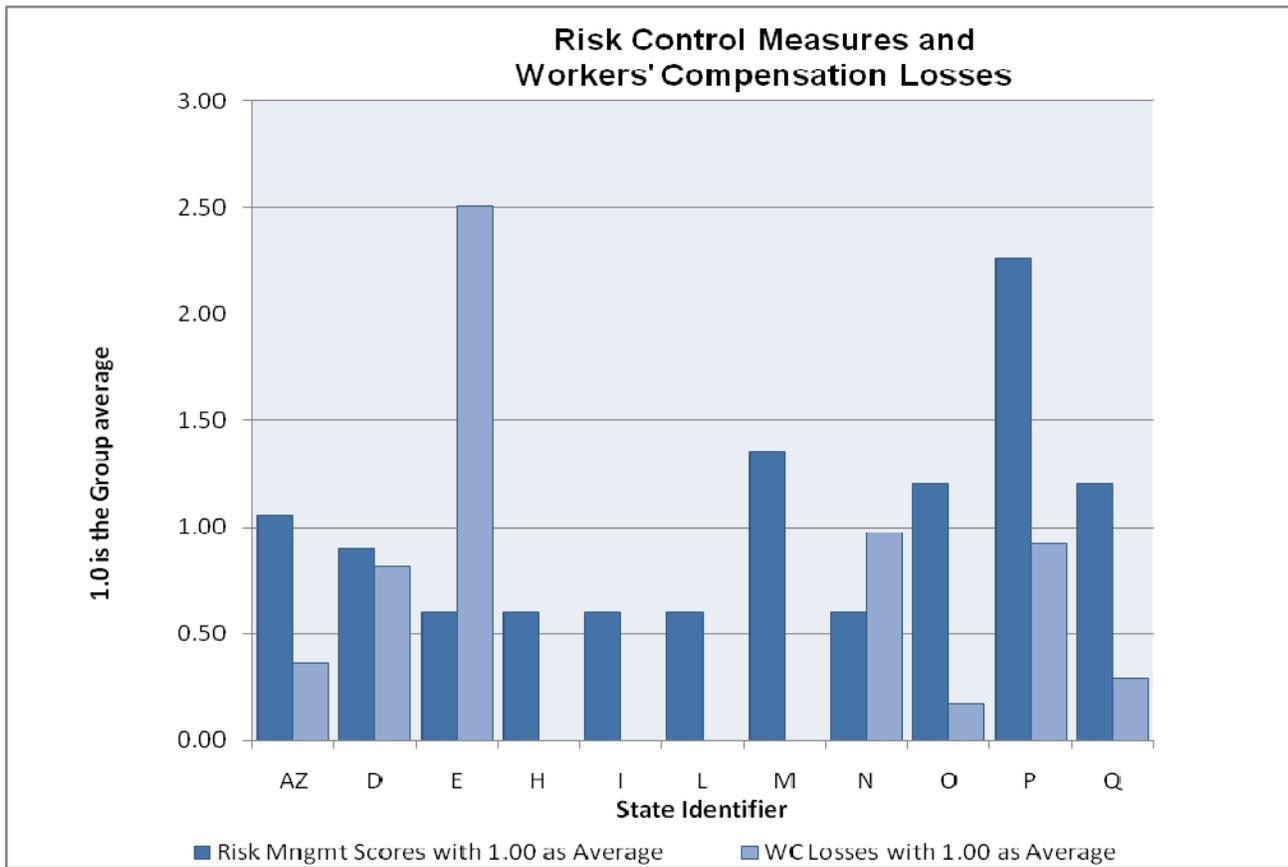


Exhibit 3 – Legal Environment

Exhibit 3
Page 1

Legal Environment											
ST	Comp. Neg. Defns.	Caps on Legal fees	Bfur.	Caps on Rec.	Caps Rstrct. on Lia.	Tort Clms Act	Attny. Gen. Handles Claims	Open or Public Rcrds Act	Legal Envir.	Legal Envir. with 1.00 as Average	GL Costs with 1.00 as Ave.
Weight	2	3	2	3	3	3	0	0			
AZ	2	0	0	0	3	0	0	0	5	0.47	4.36
B											0.13
C											0.13
D	2	0	2	3	3	3	0	0	13	1.22	0.46
E											1.29
F	2	0	2	3	3	3	0	0	13	1.22	0.06
G	0	0	0	0	0	0	0	0			0.06
H	2	0	0	0	3	3	0	0	8	0.75	0.06
I	2	0	0	3	3	3	0	0	11	1.03	0.24
J											0.24
K	2	0	0	0	0	0	0	0	2	0.19	0.24
L	2	3	2	3	3	3	0	0	16	1.50	0.24
M	2	3	2	3	3	3	0	0	16	1.50	0.10
N	2	0	2	0	3	0	0	0	7	0.66	0.86
O	2	0	2	0	3	3	0	0	10	0.94	0.86
P	2	3	2	3	3	3	0	0	16	1.50	0.86
Q	2	3	0	3	3	0	0	0	11	1.03	1.48
									Average	10.67	1.00

Notes: Weights have been provided by Bickmore Risk Services Legal Department.
 Each legal item is awarded the number of points in the weight and summed to arrive at the legal environment.
 The last two columns set the averages for all responding states to 1.00 for comparative purposes.

Abbreviations:

ST = State Comp. Neg. Defns. = Comparative Negligence Defense Bfur. = Bifurcation
 Caps on Rec. = Caps on Recoveries Caps Rstrct. on Lia. = Caps Restrictions on Liabilities
 Tort Clms Act = Tort Claims Act Attny. Gen. Handles Claims = Attorney General Handles Claims

Graph 10

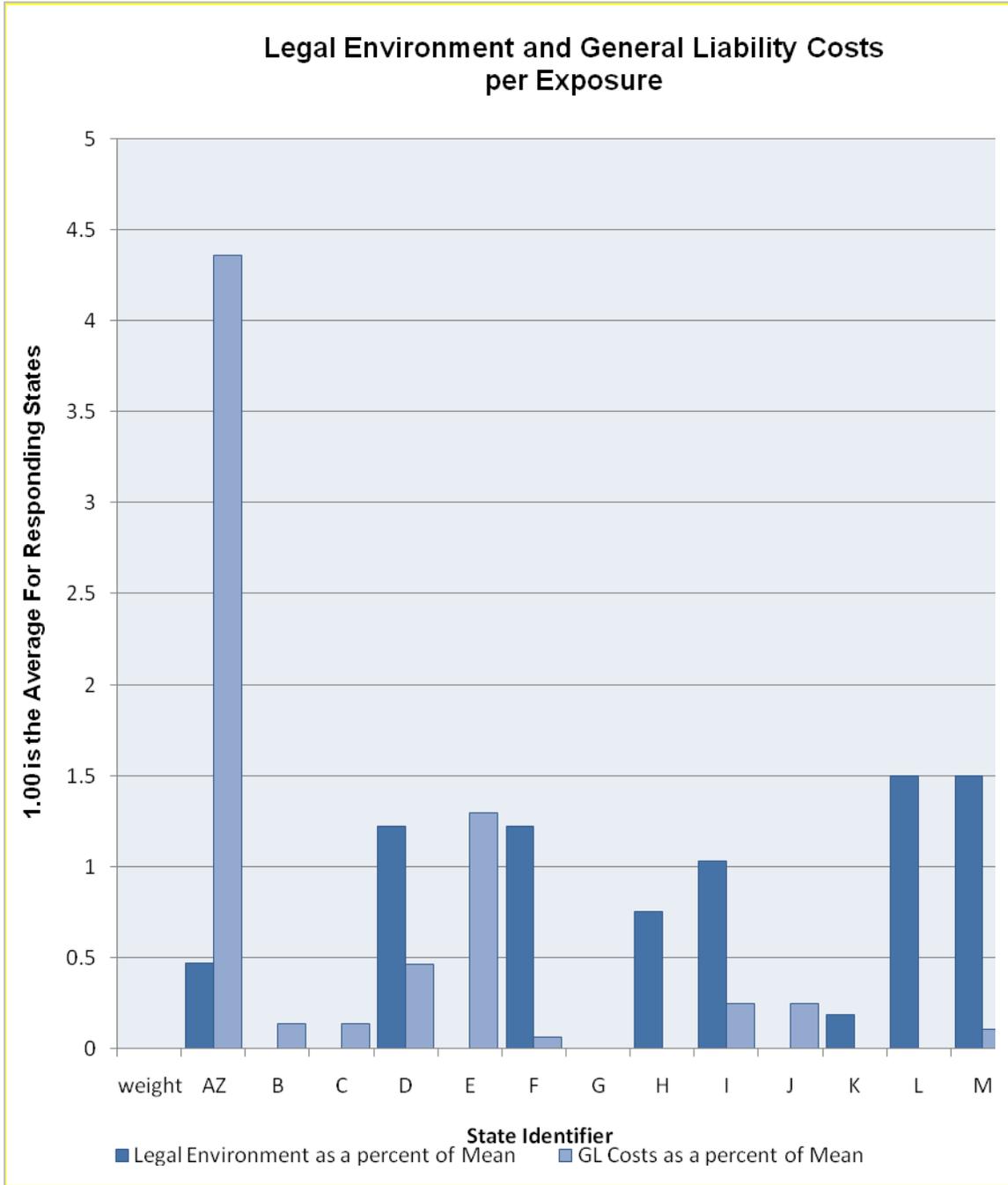


Exhibit 4 – Cost Sources

Cost Sources									
State	Signage	Maintenance	Design	Lighting	Legal Costs	Tort Claims Act	Terrorism	Natural Catastrophe	Other
weight									
AZ	1	1	1						
B									
C									
D									1
E									
F	1	1							1
G									
H	1	1	1						1
I	1	1							
J									
K	1	1			1				
L		1							
M									
N	1	1		1					
O		1	1			1			
P		1							
Q	1	1	1						
Totals	7	10	4	1	1	1	0	0	3

Notes: Summarized from Appendix 4 (Q: states' three biggest sources of loss costs)

Property Liability Cost Sources										
State	Legal Structure	Legal Limits	Insurance Costs	Loss Control	Claims Adm.	Excess Insurance	SIR	Cov-erage Limits	State Laws	Other
AZ										
B										
C										
D										
E										
F										
G										
H										
I	3	1			2					
J										
K										
L										
M										
N				2	3				1	
O				1						
P										
Q	3		2						1	

Notes: Summarized from Appendix 4.
This shows the rankings for the responding state's departments of transportation of property and liability cost sources, with 1 being the most costly.

Appendix 1 – Cost Comparison

Appendix 1 – WC

Page 1

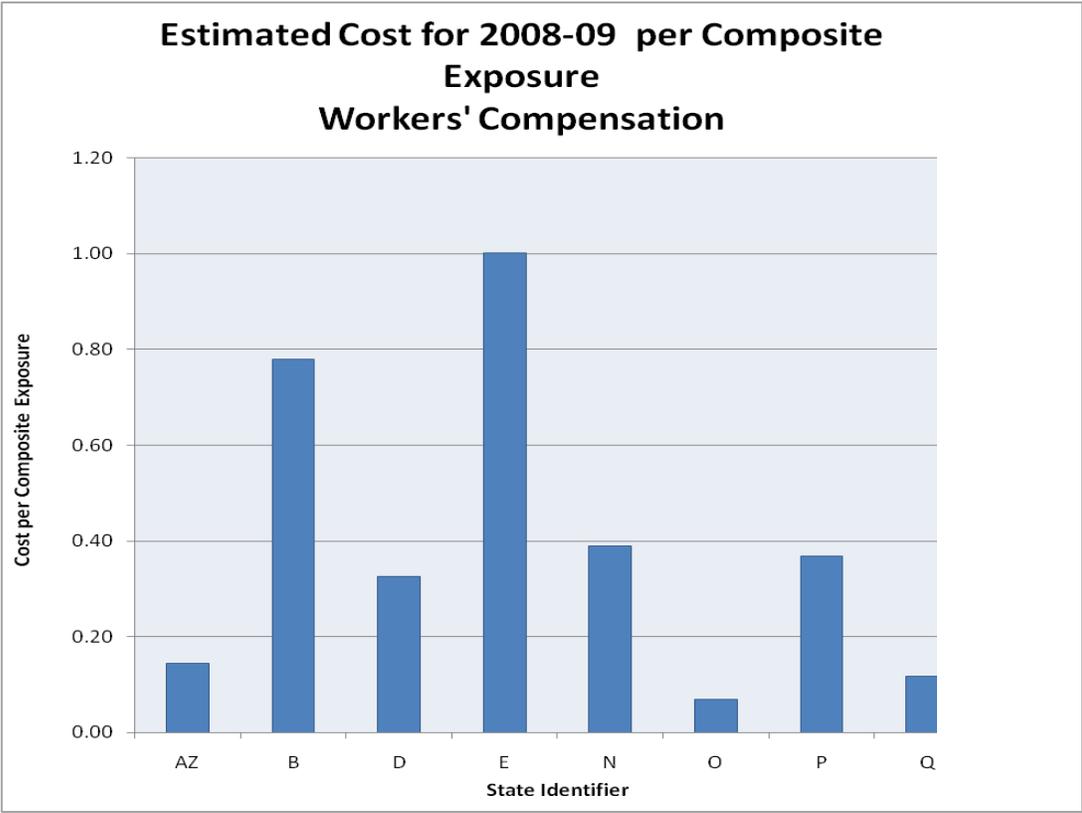
Workers' Compensation Loss Costs Brought to a Common Level

State Identifier	Cost per year (in 000s)	Put on Cash Flow Basis	Factor to Bring to All Costs Level	All Costs Level	Cost Estimated on 2008-09 basis	Brought to Unlimited SIR	Composite Exp.	2008-09 Estimated Cost/Exp.	2008/09 Cost/Exp as a Percent of Mean
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
AZ	3,323	3,323	1.00	3,323	3,663	3,663	25,287	0.14	0.36
B	28,500	28,500	1.15	32,775	32,775	35,233	45,253	0.78	1.95
D	7,300	7,300	1.00	7,300	7,665	8,240	25,292	0.33	0.82
E	33,000	33,000	1.04	34,155	34,155	34,155	34,117	1.00	2.51
N	6,500	6,500	1.00	6,500	6,500	6,500	16,684	0.39	0.98
O	2,000	1,852	1.04	1,917	1,917	1,917	27,986	0.07	0.17
P	11,167	11,167	1.00	11,167	11,167	11,167	30,238	0.37	0.92
Q	3,500	3,241	1.12	3,630	3,811	3,811	32,521	0.12	0.29
average:	11,911	11,860		12,596	12,707	13,086	29,672	0.40	1.00

Notes: *Italics indicate an estimate.*

- (A) Only DOTs that responded with costs are included.
- (B) From Appendix 1 - WC, Page 3.
- (C) Accrual estimations are assumed to be 7% greater than Cash Flow estimates, based on ADOT's Cost of Risk Study, dated August 9, 2007. DOT costs are assumed to be on a cash flow basis unless otherwise stated.
- (D) From Appendix 1 - WC, Page 4, Item (H), estimating the cost if all components were included.
- (E) (C) x (D).
- (F) We assume costs are increasing by 5% per year.
- (G) A factor has been applied to the State that had limited SIR to bring to unlimited assuming that losses above the DOTs SIR will cost an additional 7.5%.
- (H) From Appendix 5, Page 2, Item (F) .
- (I) (G)/(H)
- (J) (I)/Average (I)

Graph 11



Survey Replies Summary – Workers’ Compensation

ST	Coverage: Guaranteed Cost or Self- Insured	Prem. Cost	Prg. Year	Self- Insured Retention	Limit	Cost	Year	Claims Adm.	Cash flow or accrual basis
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
AZ	Self-insured			unlimited	unlimited	3,322,736	2006-07 FY	In- house	Cash flow
B	Self-insured			n/a	n/a	28,500,000	2008	In- house	Cash flow
C	Self-insured								
D	Self-insured				1 MIL	7,300,000	2007	TPA	Cash flow
E	Self-insured					33,000,000	08-09	TPA	
F	Self-insured								
G	Self-insured			1,650,000				In- house	Cash flow
H	Self-insured							TPA	Cash flow
I	Self-insured							In- house	Cash flow
J	Self-insured								
K	Guaranteed cost								
L	Self-insured no re- sponse			unknown	unknown	unknown	un- known	In- house	
M									
N	Self-insured			unlimited		6,500,000	2009 each year	TPA	Cash flow
O	Self-insured Guaranteed			NA	150,000/ agency	2,000,000		TPA	Accrual
P	cost	11,167,180	2007						
Q	Self-insured			first dollar	none	3,500,000	2007	In- house	Accrual
	Self-ins: 88%					unweighted average: 5,155,684		TPA: 55%	Cash Flow: 78%

Notes: From ADOT 2007 survey conducted by BRS Risk and Consulting Services.

Participants are assigned a letter to maintain confidentiality.

Definitions: For In-house claims administration the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Survey Replies Summary – Workers’ Compensation

ST	Losses Included	Legal costs Included	Loss control Included	Claims Administration Included	Excess Insurance Included	Other Included	Medical Expenses Included	Factor to bring to All Costs Level
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
AZ	Losses	Legal costs	Loss control	Claims adm.	Excess insurance			1.000
B	Losses	-	-	-	-	-		1.150
C	-	-	-	-	-	-		
D	Losses	Legal costs	Loss control	Claims adm.	Excess insurance	-		1.000
E	Losses	Legal costs	-	Claims adm.	-	-		1.035
F	-	-	-	-	-	-		1.000
G	Losses	Legal costs	Loss control	Claims adm.	Excess insurance	-		1.000
H	Losses	Legal costs	Loss control	Claims adm.	-	-		1.000
I	Losses	Legal costs	-	Claims adm.	-	-		1.035
J								
K								
L	-	-	-	-	-	-		
M								
N	Losses	Legal costs	Loss control	Claims adm.	-	-		1.000
O	Losses	Legal costs	-	Claims adm.	-	Other	medical expenses	1.035
P								1.000
Q	Losses	Legal costs	-	-	-	-		1.120

(J) Typical Percent of Total Costs

85.0%	3.5%	3.5%	8.0%	100%
-------	------	------	------	------

Item H estimates the costs of missing components of each program to set them at the same level.

These are based on Best's 2005¹ losses by line, legal and loss control are assumed to be 1/2 of the Best combined category. Most lines have no Excess Insurance.

Notes: From ADOT 2007 survey conducted by BRS Risk and Consulting Services.

¹ Best's Aggregates & Averages, 2005 Edition

**General Liability
Loss Costs Brought to a Common Level**

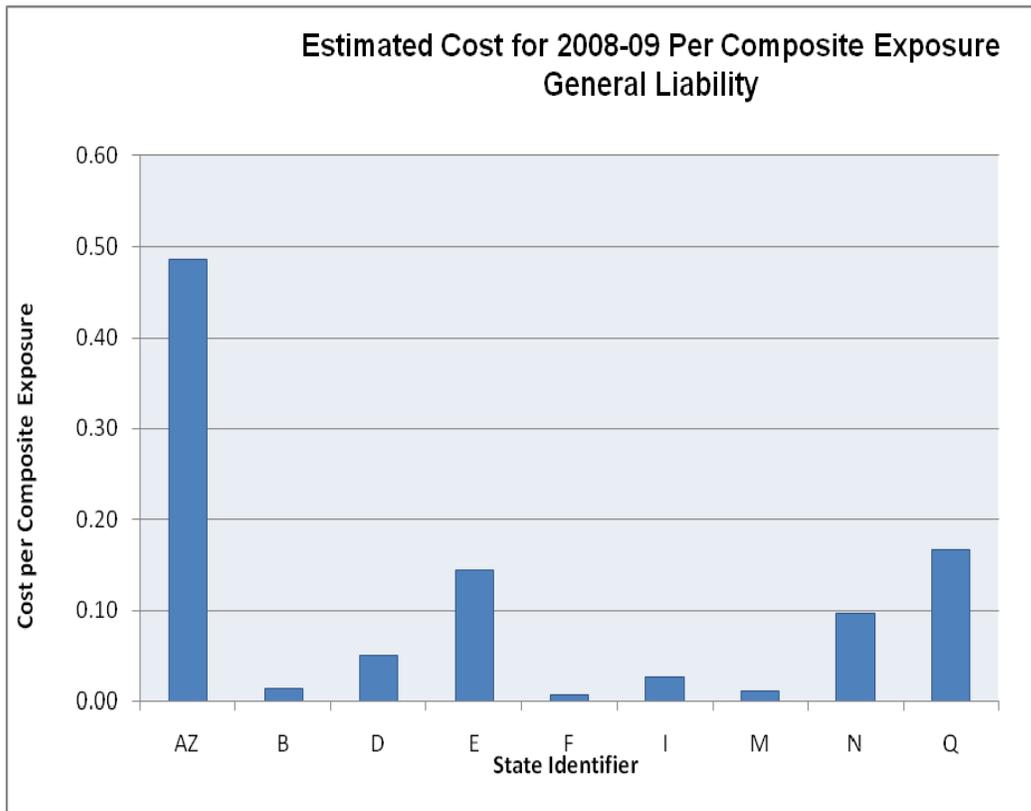
ST	Cost per year (000s)	Put on Cash Flow Basis	Factor to Bring to All Costs Level	All Costs Level	Cost Estimated on 2008-09 basis	Brought to Unlimited SIR	Composite Exposure	2008-09 Estimated Cost/Exposure	Percent of Mean
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
AZ	10,973	10,973	1.00	<i>10,973</i>	<i>12,098</i>	12,098	24,854	0.49	436%
B	500	500	1.19	<i>595</i>	<i>656</i>	656	44,131	0.01	13%
D	1,100	1,100	1.00	1,100	<i>1,155</i>	<i>1,380</i>	26,793	0.05	46%
E	3,888	3,888	1.07	<i>4,160</i>	4,160	<i>5,043</i>	34,878	0.14	129%
F	107	107	1.07	<i>115</i>	115	<i>142</i>	21,703	0.01	6%
I	754	754	1.07	<i>806</i>	<i>889</i>	889	32,669	0.03	24%
M	204	182	1.14	<i>207</i>	<i>218</i>	<i>327</i>	28,502	0.01	10%
N	1,500	1,500	1.07	<i>1,605</i>	1,605	1,605	16,695	0.10	86%
Q	5,000	4,464	1.12	<i>5,000</i>	<i>5,250</i>	5,250	31,680	0.17	148%
avg:	2,670	2,608			2,905	3,043	29,101	0.11	100%

Notes *Italics indicate an estimate.*

- (A) Only DOTs that responded with costs are included.
- (B) From Appendix 1 - GL, Page 3.
- (C) Accrual estimations are assumed to be 12% greater than Cash Flow estimates, based on ADOT's Cost of Risk Study. DOT costs are assumed to be on a cash flow basis unless otherwise stated.
- (D) From Appendix 1 - GL, Page 4, Item (H).
- (E) (C) x (D).
- (F) We assume costs are increasing by 5% per year.
- (G) A factor has been applied to the State that had limited SIR to bring to unlimited.
- (H) From Appendix 5, Page 2 Item (G).
- (I) (G)/(H)
- (J) (I)/Average (I)

We have assumed that losses are given on a cash flow basis unless the respondent indicated otherwise.

Graph 12



Survey Replies Summary – General Liability

ST	Coverage: Guaranteed Cost or Self- Insured	Premium Cost	Program Year	Self- Insured Retention	Limit	Cost	Year	Claims Adm.	Cash flow or accrual basis
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
AZ	Self- insured			7,000,000	Purchased 125 Mil unlimited over that amount	10,973,392	2006-07	In- house	Cash flow
B	Self- insured			n/a	none	500,000	2006	In- house	Cash flow
C									
D	Self- insured				\$500,000 Cap	1,100,000	2007	In- house	Cash flow
E	Self- insured				300k/1m	3,888,300	08-09	In- house	
F	Self- insured			1,000	400,000	107,087	FY2008	In- house	Cash flow
G	Self- insured			1,000,000	1,000,000			In- house	Accrual
H	Self- insured							In- house	Cash flow
I	Self- insured			4,000,000	50 million	753,500	2006 for excess	In- house	Cash flow
J									
K	Guaranteed cost Self- insured	Incomplete Answer	Incomplete Answer					In- house	Cash flow
L				\$1,000,000	\$5,000,000 \$175,000/ claimant/ claim	203,977	7/1/07-08 2009 projection	In- house	Accrual
M	Self- insured							In- house	Cash flow
N	Self- insured			unlimited		1,500,000		In- house	Cash flow
O	Self- insured							In- house	Cash flow
P	Guaranteed cost Self- insured	6,751,536	2007						
Q				first dollar	none	5,000,000	2007	In- house	Accrual
	Self- insured 87%					unweighted average 2,585,862		In- house 100%	Cash Flow 78%

Notes: From ADOT 2007 survey conducted by BRS Risk and Consulting Services.
Participants are assigned a letter to maintain confidentiality.

Definitions: For in-house claims administration the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Survey Replies Summary – General Liability

State Identifier	Losses Included	Legal costs Included	Loss control Included	Claims Administration Included	Excess Insurance Included	Other Included	Other Response	Factor to bring to All Costs Level (H)
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
AZ	Losses	Legal costs	Loss control	Claims adm.	Excess insurance			1.00
B	Losses	-	-	-	-	-		1.19
C		Legal costs	Loss control	Claims adm.				
D	Losses	Legal costs	Loss control	Claims adm.	-	-		1.00
E	Losses	Legal costs	-	Claims adm.	-	-		1.07
F	Losses	Legal costs	-	Claims adm.	-	-		1.07
G	Losses	Legal costs	-	Claims adm.	Excess insurance	Other	Admin costs/Dividends	1.00
H	Losses	Legal costs	Loss control	Claims adm.	-	-		1.00
I	Losses	Legal costs	-	Claims adm.	Excess insurance	-		1.07
J								
K								
L	Losses	Legal costs	Loss control	Claims adm.	-	-		1.00
M	Losses	-	-	Claims adm.	-	-		1.14
N	Losses	Legal costs	-	Claims adm.	-	-		1.07
O	Losses	Legal costs	-	-	-	-		1.12
P								1.00
Q	Losses	Legal costs	-	-	-	-		1.12

(J) Typical Percent of Total Costs

81.0%	7.0%	7.0%	5.0%	100%
-------	------	------	------	------

Item H estimates the costs of missing components of each program to set them at the same level.

These are based on Best's 2005² losses by line, legal and loss control are assumed to be 1/2 of the Best combined category.

Notes: From ADOT 2007 survey conducted by BRS Risk and Consulting Services.

² Best's Aggregates & Averages, 2005 Edition

**Auto Liability
Loss Costs Brought to a Common Level**

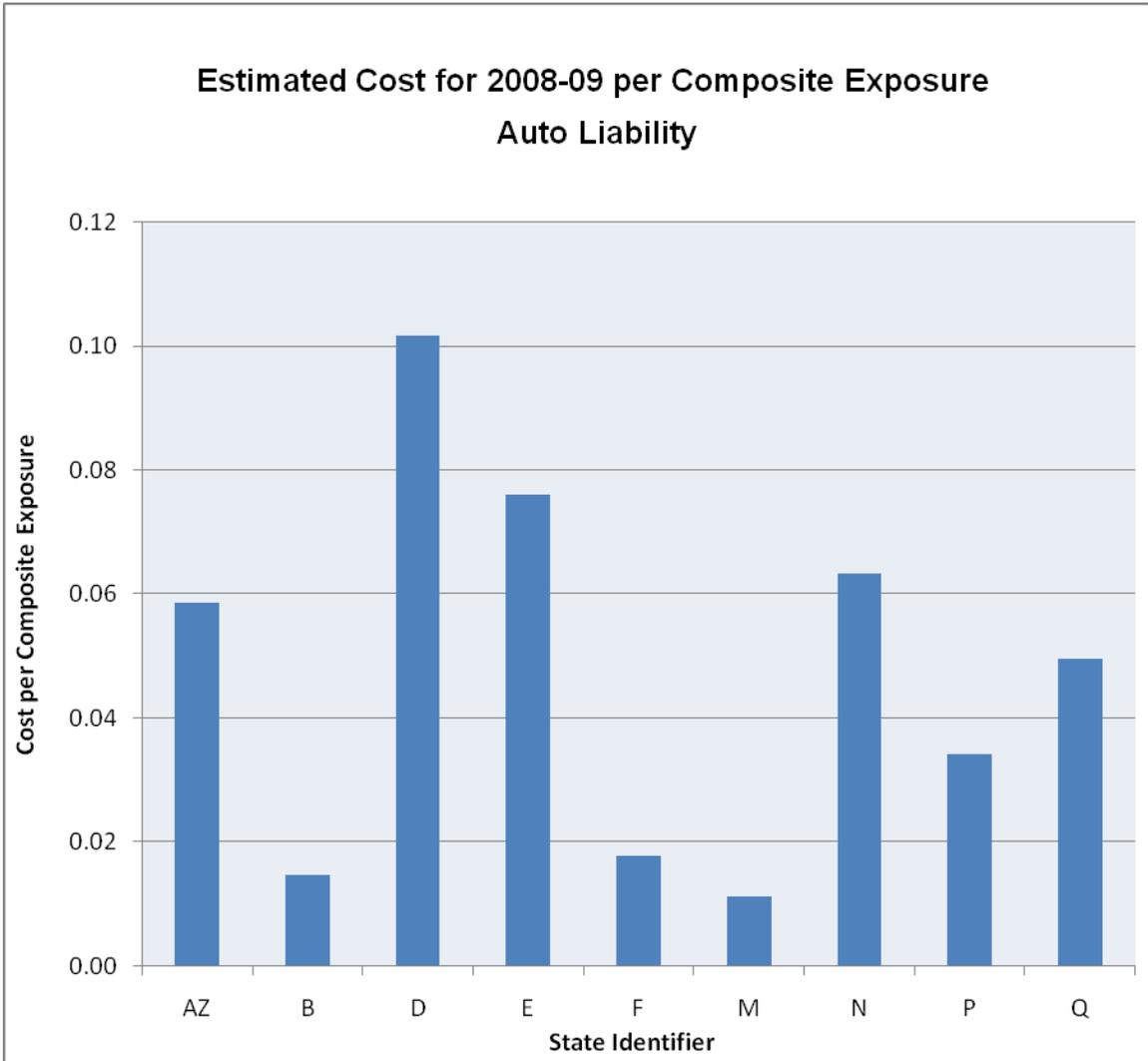
ST (A)	Cost per year (000s) (B)	Put on Cash Flow Basis (C)	Factor to Bring to All Costs Level (D)	All Costs Level (E)	Cost Estimated on 2008-09 basis (F)	Brought to Unlimited SIR (G)	Composite Exposure (H)	2008-09 estimated Cost/Exp (I)	Percent of Mean (J)
AZ	1,418	1,418	1.00	1,418	1,563	1,563	26,669	0.06	123%
B	500	500	1.15	575	634	634	42,722	0.01	31%
D	2,300	2,300	1.00	2,300	2,415	2,886	28,406	0.10	214%
E	2,472	2,472	1.04	2,571	2,571	2,571	33,870	0.08	160%
F	254	254	1.04	264	264	329	18,378	0.02	38%
M	236	215	1.08	232	244	366	32,278	0.01	24%
N	750	750	1.04	780	819	819	12,958	0.06	133%
P	1,005	1,005	1.00	1,005	1,005	1,005	29,383	0.03	72%
Q	1,600	1,455	1.11	1,615	1,696	1,696	34,234	0.05	104%
Avg.	1,171	1,152			1,246	1,319	28,766	0.05	100%

Notes: *Italics indicate an estimate.*

- (A) Only DOTs that responded with costs are included.
- (B) From Appendix 1 - AL, Page 3.
- (C) Accrual estimations are assumed to be 10% greater than Cash Flow estimates, based on ADOT's Cost of Risk Study, dated August 9, 2007. DOT costs are assumed to be on a cash flow basis unless otherwise stated.
- (D) From Appendix 1 - AL, Page 4, Item (H).
- (E) (C) x (D).
- (F) We assume costs are increasing by 5% per year.
- (G) A factor has been applied to the State that had limited SIR to bring to unlimited.
- (H) From Appendix 5, Page 2, Item (G).
- (I) (G)/(H)
- (J) (I)/Average (I)

We have assumed that losses are given on a cash flow basis unless the respondent indicated otherwise.

Graph 13



Survey Replies Summary – Auto Liability

ST	Coverage: Guaranteed Cost or Self- Insured	Premium Cost	Prgm. Year	Self- Insured Retention	Limit	Cost	Year	Claims Adm.	Cash Flow or Accrual Basis
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
AZ	Self- insured			7,000,000	Purchased 125 Mil unlimited over that amount	1,417,819	2006-07	In-house	Cash flow
B	Self- insured			n/a	none	500,000	2006	In-house	Cash flow
C									
D	Self- insured				500,000	2,300,000	2007	In-house	Cash flow
E	Self- insured					2,472,400	08-09	In-house	
F	Self- insured			0	400,000	254,185	FY2008	In-house	Cash flow
G	Self- insured			1,000,000	300,000/ 1,000,000			Third party claims ad- ministrator	Accrual
H									
I	Self- insured			2500				In-house	Cash flow
J									
K	Guaranteed cost	Incomplete Answer	Incomplete Answer						
L	Self- insured			same as GL				In-house	Cash flow
M	Self- insured				\$175,000/ claimant /claim	236,437	7/1/07-08 2009 projection	In-house	Accrual Cash flow
N	Self- insured			unlimited		750,000		In-house	Cash flow
O	Self- insured							In-house	Cash flow
P	Guaranteed cost	1,005,120	2007						
Q	Self- insured			first dollar	none	1,600,000	2007	In-house	Accrual
Recap	Self- insured 87%					<i>unweighted average</i> 1,058,982		<i>in-house</i> 100%	<i>Cash Flow</i> 78%

Notes: From ADOT 2007 survey conducted by BRS Risk and Consulting Services.
Participants are assigned a letter to maintain confidentiality.

Definitions: For in-house claims administration the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Appendix 2 – Risk Control

Appendix 2
Page 1

Risk Control Measures

	Risk Management			Engineering	Inspections		
	Risk Identification and Assessment	Behaviorally Based Safety and Work Comp Programs.	Best Practices	Engineering Practices	Inspection of Properties	Safety Inspections	Property Inspections
Weight	3	3	3	3	2	2	2
AZ	1						
B							
C							
D					1		
E							
F							
G							
H							
I							
J							
K							
L							
M			1		1		
N							
O		1					
P				1	1		
Q							

Risk Control Measures

	Training				Compliance		Programs	
	Loss Control Training	Safety Training Programs/meetings	Highway Safety	Occupational Safety Program.	OSHA/EPA Compliance	Legislation	Safety Manual Available	Plans Re-view
Weight	2	2	2	2	3	3	2	2
AZ		1						
B								
C								
D		1						
E								
F								
G								
H		1					1	
I	1	1						
J								
K								
L	1	1						
M		1						
N		1						
O					1			
P			1	1	1	1		
Q		1						

Risk Control Measures

	Investigation		Culture	Workers' Compensation			Total
	Claims Investigation	Accident Investigation	Agency Driven	WC Assessments	Temporary Modified Duty	Fit for Duty	
Weight	1	2	2	2	2	2	
AZ			1				7
B							0
C							0
D				1			6
E			1		1		4
F							0
G							0
H							4
I							4
J							0
K							0
L							4
M		1					9
N		1					4
O						1	8
P							15
Q		1			1	1	8

Description of the Safety and Loss Control Practices

Please provide a brief, general description of your safety and loss control practices.

- AZ The Arizona Revised Statutes require each agency to conduct risk identification and assessment, and implement a Loss Prevention Program to reduce the frequency and severity of losses in:
Employee safety in the workplace
Real and personal property protection
Industrial Hygiene and Environmental Protection as required by Federal and State standards
Negligent acts that cause third-party claims
- B
- C
- D Inspection of all state properties, driver training, WC assessments
- E Agency Driven
- F
- G
- H Safety office maintains and publishes a safety manual that is available on-line to all employees. Safety officers conduct safety training statewide in all facets of the Department's duties.
- I Have two internal safety specialists that provide safety and loss control and training for all regions. In addition, have a safety coordinator within each bureau that provides safety training and inspections for their facility and/or site.
- J
- K Incomplete Answer
- L We will tailor a safety and loss control presentation for the specific agencies that request it. The State's Department of Transportation has a comprehensive safety program for its employees.
- M Education including seminars, presentations, and onsite meetings. Provides consultation and resources for "best practices", plans review, property inspections, and claims investigation. Respond to large property losses to assist agencies with mitigation.
- N DOT safety officers administer training and accident review of employee injury claims, hold safety meetings, etc.,
- O In-house safety team, focused on OSHA responses, developing behaviorally based safety and work comp programs.
- P The state's DOT has a comprehensive highway safety and occupational safety program. Highway safety initiatives include legislation, driver education, and engineering practices and inspections. Occupational safety initiatives include efforts within industrial, fleet and chemical safety components, such as OSHA/EPA compliance, employee training, inspections, accident investigations, etc.
- Q Each of the 10 districts and central office has safety and health managers. They are very aggressive in training and incident investigation. We have really pushed temporary modified duty (TMD) and a new fit for duty program.

Description of the Safety and Loss Control Practices

Please briefly describe any special or particularly effective programs your state has and how they have contributed to a reduction in the cost of risk for your state.

- AZ N/A
- B
- C
- D driver training programs
- E pilot program with return to work
- F
- G
- H This question is too vague to frame a proper response.
- I Owner Controlled Insurance Programs (OCIPS) for large construction projects
- J
- K Incomplete Answer
- L
- M Human resource and development training for any state agency personnel in safety management and/or Risk Management. These classes are vital to individuals and divisions assigned those duties. This program has provided assistance in risk identification and the implementation of a continuous risk improvement process at all levels of state government.
- N enhance safety program last few years has shown diminished workplace accidents.... that decrease reduces the cost of risk allocation by Risk Management as it is based on both exposure and experience (loss history)
- O Aggressive return to duty/light duty program resulted in reduction of lost days by 1500 + last year.
- P
- Q Temporary modified due and fit for duty. TMD returns injured employees back to meaningful work much quicker than usual. Fit for duty assists in protecting employees and the traveling public if we have an employee not capable of doing his job.

Risk Control Measures Effectiveness Ranking			
Risk Control Measures	Relative Effectiveness		
Risk Management:			
Risk Identification and Assessment	3		
Behaviorally Based Safety and Work Comp Programs.	3		
Best Practices	3		
Engineering:			
Engineering Practices	3		
Inspections:			
Inspection of Properties		2	
Safety Inspections		2	
Property inspections		2	
Training:			
Driver Training/driver Education		2	
Loss Control Training		2	
Safety Training Programs/meetings		2	
Highway Safety		2	
Occupational Safety Program.		2	
Compliance:			
OSHA/EPA Compliance	3		
Legislation	3		
Programs:			
Safety Manual Available		2	
Plans Review		2	
Investigations:			
Claims Investigation			1
Accident Investigation		2	
Culture:			
Agency Driven		2	
Workers Compensation:			
WC Assessments		2	
Temporary Modified Duty		2	
Fit for Duty		2	
Provided by Bickmore Risk Services Risk Control Department			

Appendix 3 – Legal Environment

Legal Environment Summary of Responses											
S T	Com- pen- sa- tory Negli- gence Defense	Caps on legal fees	Bifur- cation	Caps on Recov- eries	State Restric- tions on Liabilities	Tort Claims Act	Attorney General Handles Claims	Open or Public Record Act	Legal Envi- ronment	Legal Environ- ment. as Percent of Mean	General Liability Costs as a Percent of Mean
	2	3	2	3	3	3	0	0			
A											
Z	1	0	0	0	1	0	1	1	5	0.47	4.36
B											0.13
C											0.13
D	1		1	1	1	1	1	0	13	1.22	0.46
E							0	1			1.29
F	1		1	1	1	1	1	1	13	1.22	0.06
G										0.00	
H	1				1	1	1	0	8	0.75	
I	1			1	1	1	1	1	11	1.03	0.24
J											0.24
K	1						0	0	2	0.19	
L	1	1	1	1	1	1	1	1	16	1.50	
M	1	1	1	1	1	1	1	1	16	1.50	0.10
N	1		1		1	0	1	1	7	0.66	0.86
O	1		1		1	1	1	1	10	0.94	0.86
P	1	1	1	1	1	1	0	0	16	1.50	0.86
Q	1	1		1	1	0	0	0	11	1.03	1.48
									Average	10.67	

Note: Weights are from Appendix 3, Page 3 on page 54.

Legal Environment – Actual Responses

Note – specific state law citations deleted to maintain respondent anonymity

	Does your state's judicial system allow comparative or contributory negligence defenses?	Please briefly explain any recent changes in the legal handling of claims in your state.	If your state limits legal fees in any way, please indicate the limits and cite the specific statute or law.
AZ	Arizona follows the doctrine of pure comparative negligence	none	not limited -done by bid to represent the State
B			
C			
D	Yes	2004 tort reform corrected venue problems, strengthened statute of limitations & capped non-economic damages.	
E			
F	Yes	None known	unknown
G			
H	Yes	None. All claims against the Department are processed through the State Claims Commission because state agencies are immune from suit.	N/A. See previous response.
I	Yes		
J			
K	Yes	Incomplete Answer	Incomplete Answer
L	Yes	none	Attorney fees are not allowed except pursuant to contract or statutory allowance; not allowed under our governmental claims act.
M	Yes	The answer to first question is "Combination". Effective 11/1/07, the law requires exchange of data with Child Support Enforcement Division before paying any claim for personal injury, wrongful death, or workers compensation.	Legal fees limited. The State's limit of liability also applies to attorney fees and litigation cost recovery, if any.

Legal Environment – Actual Responses

	Does your state's judicial system allow comparative or contributory negligence defenses?	Please briefly explain any recent changes in the legal handling of claims in your state.	If your state limits legal fees in any way, please indicate the limits and cite the specific statute or law.
N	Yes	pure comparative	no statutory caps
O	Yes	State employs a comparative fault system	The attorney fees and expenses are paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant. Code Ch 669.15
P	Yes	Comparative	Yes, Attorney General must approve fees of outside attorneys. Generally limited to \$125 per hour, by law
Q	Yes	Comparative fault. Joint and several liability thresholds have been increased from 1 percent to 51 percent or greater.	Yes, in workers' compensation they are limited to 25 percent of settlement.

Legal Environment – Actual Responses

	To what extent does your state permit bifurcation of liability and damages in trial?	Please briefly describe any state-imposed caps on recovery designed to protect governmental entities in your state.
AZ	Can be granted by the judge.	none
B		
C		
D	Only in punitive damage awards	\$500,000 per occurrence
E		
F	Any claim with multiple counts or defendants can be bifurcated.	Tort Claims Act spells out
G		
H	N/A. See previous response.	N/A. See previous response.
I		250,000 per claimant per negligent State officer, employee and agent involved - by statute.
J		
K	Incomplete Answer	Incomplete Answer
L	At the discretion of the trial court under limited circumstances.	\$250,000 per person/ \$500,000 per occurrence
M	At discretion of court	\$25,000 limit in property damage, \$175,000 in other non-U.S. Constitutional claims, with a limit of \$1,000,000 per occurrence for any number of claims.

Legal Environment – Actual Responses

	To what extent does your state permit bifurcation of liability and damages in trial?	Please briefly describe any state-imposed caps on recovery designed to protect governmental entities in your state.
N	upon motion to the court	no statutory caps
O	Yes Liability and damages are generally tried together; The trial court may allow bifurcation in the exercise of its sound discretion.	No
P	A motion seeking bifurcation of the issues of liability and damages in a personal injury case is addressed to the sound discretion of the trial court pursuant to state Rules of Civil Procedure.	\$300, per person / \$600,000 per occurrence.
Q		\$355,396 per person, \$2,369,306 per occurrence, Changes annually based on price index.

Legal Environment – Actual Responses

	Please briefly explain any state-imposed restrictions that are designed to limit the liability of governmental entities in your state.	Does your state have a "Government Tort Claims Act" that outlines the legal process for making a tort claim or filing a lawsuit against your state?	Please provide the specific statute or law.
AZ	<p>Section 12-820.01, Absolute Immunity, of the Arizona Revised Statutes states that a public entity shall not be liable for acts and omissions of its employees constituting any of the following:</p> <ul style="list-style-type: none"> • The exercise of a judicial or legislative function. • The exercise of an administrative function involving the determination of fundamental governmental policy. • The determination of a fundamental governmental policy involves the exercise of discretion and shall include, but is not limited to: <ul style="list-style-type: none"> • A determination of whether to seek or whether to provide the resources necessary for any of the following: <ul style="list-style-type: none"> • The purchase of equipment. • The construction or maintenance of facilities. • The hiring of personnel. • The provision of governmental services. • A determination of whether and how to spend existing resources, including those allocated for equipment, facilities, and personnel. • The licensing and regulation of any profession or occupation. • The establishment, implementation, and enforcement of minimum safety standards for light rail transit systems. <p>According to Section 12-820.02, Qualified Immunity, of the Arizona Revised Statutes, unless a public employee acting within the scope of the public employee's employment intended to cause injury or was grossly negligent, neither a public entity nor a public employee is liable for the following:</p> <ul style="list-style-type: none"> • An injury to the driver of a motor vehicle that is attributable to the violation by the driver of section 28-693, 28-1381 or 28-1382. • The qualified immunity provided in this section applies to a public entity or public employee if the injury or damage was caused by a contractor's employee or a contractor of a public entity acting within the scope of the contract. The qualified immunity provided in this section does not apply to the contractor or the contractor's employee. 	no	Section 12-820.01
B			
C			
D	Sovereign immunity is waived in certain instances only.	Yes	State law.
E			

Legal Environment – Actual Responses

F	Tort Claims Act spells out	Yes	State law.
G	Please briefly explain any state-imposed restrictions that are designed to limit the liability of governmental entities in your state.	Does your state have a "Government Tort Claims Act" that outlines the legal process for making a tort claim or filing a lawsuit against your state?	Please provide the specific statute or law.
H	All claims against the Department are processed through the State Claims Commission because state agencies are immune from suit.	Yes	State law.
I	Liability for tort claims in the state of is limited to negligent and casual acts of specific individual employees, officers and agents. The State agencies retain sovereign immunity and are not subject to tort claims filed in state courts.	Yes	State law.
J			
K	Incomplete Answer	No	Incomplete Answer
L	Limited and specific waivers of immunity, some application of good faith immunity	Yes	State law.
M	See Governmental Tort Claims Act, and exemptions	Yes	State law.
N	some limitations within relevant state law and related statutes	No	
O	State code provides exemptions related to highway signing and snow and ice control.	Yes	State law.
P	State code provides statutory immunities.	Yes	State law.
Q	Yes, Sovereign immunity is waived only for negligent operation of a motor vehicle and the dangerous condition of property.	No	

Legal Environment – Actual Responses

	Does your state's Attorney General's office handle the litigation or settlement of claims against the Department of Transportation in your state?	Please briefly explain how or by whom the legal aspects of claims against your state are handled.	Does your state have a "Public Records Act" or "Open Records Law"?	Please provide the specific statute or law:
AZ	Yes	Attorney General	Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.	Law - Inspection of public records
B				
C				
D	No	Defense is assigned to a list of attorneys pre-approved by the Tort Claims Board.	Yes	
E	Yes			
F	Yes	Until 2007, DOT had its own legal defense team, did not participate in the State's Risk management fund for tort claims. Now, the AG's Office litigates; Risk Mgmt has final say in settlement.	Yes	State law.
G				
H	No	Office of the Chief Counsel State Highway & Transportation Department	Yes	State law.
I	Yes	Department of Justice provides legal defense for all liability claims.	Yes	State law.
J				
K	No	Incomplete Answer	No	
L	Yes	AG's office in conjunction with Risk Management	Yes	State law.
M	Yes		Yes	State law.

Legal Environment – Actual Responses

	Does your state's Attorney General's office handle the litigation or settlement of claims against the Department of Transportation in your state	Please briefly explain how or by whom the legal aspects of claims against your state are handled.	Does your state have a "Public Records Act" or "Open Records Law"?	Please provide the specific statute or law:
N	Yes	Risk Management funds the special litigation (torts and w/c) section within the Dept. of Law... with inhouse trial attys we are more able to cost effectively handle liability claims against all state agencies... see state's website for better description and details of Risk Management program	Yes	State law.
O	Yes		Yes	State law.
P	No	State agencies are insured through the Insurance Reserve Fund ("SCIRF"). The SCIRF provides defense and pays claims. Defense is handled by local private attorneys who are hired and paid by the SCIRF.	Yes	
Q	No	Staff attorneys and contracted private attorneys.	Yes	Sunshine Law

Legal Environment – Relative Rankings				
Legal Environment Item				
Scale 0-3 3 being very helpful, 0 being of no effect.				
	Contributory	Comparative		
Does your state's judicial system allow comparative or contributory negligence defenses?	3	2		
To what extent does your state permit bifurcation of liability and damages in trial?	2			
	Joint and Several Liability	Caps on Econ. Damage	Prohibit Punitive Damages	Sovereign Immunity
State-imposed restrictions that are designed to limit the liability of governmental entities in your state.	-1	3	3	3
Does your state have a "Government Tort Claims Act" that outlines the legal process for making a tort claim or filing a lawsuit against your state?	3			
Does your state's Attorney General's office handle the litigation or settlement of claims against the Department of Transportation in your state?	0			
Who handles the legal aspects of claims against your state?	0			
Does your state have a "Public Records Act" or "Open Records Law"?	0			

Note: Legal environment factors were listed in the survey conducted by BRS. The BRS risk control department listed typical risk control methods and rated their effectiveness on a scale of 1 to 3. One factor, State-imposed restrictions with joint and several liability, was actually deemed harmful, hence it was rated as a -1. These ratings were made based on the years of expertise of BRS's risk control department in this field.

Appendix 4 – Cost Sources

Appendix 4
Page 1

Sources of Loss									
<i>Q: What are the three biggest sources of loss for your state's Department of Transportation?</i>									
AZ	Signage	Maintenance		Design					
B									
C									
D									
E	-	-	-	-	-	-	-	-	
F	-	Maintenance	Signage	-	-	-	-	Other:	Vehicle Operation
G									
H	Design	Maintenance	Signage	-	-	-	-	-	
I	-	Maintenance	Signage	-	-	-	-	Other:	Highway and Bridge Damage
J									
K	-	Maintenance	Signage	-	-	-	-	-	
L	-	Maintenance	-	-	-	-	-	-	
M	-	-	-	-	-	-	-	Other:	Contact state DOT for data
N	-	Maintenance	Signage	Lighting	-	-	-	-	
O	Design	Maintenance	-	-	Legal costs	-	-	-	
P	-	Maintenance	-	-	-	-	-	-	
Q	Design	Maintenance	Signage	-	-	-	-	-	

Property Losses – Top Concerns

Q: Please rank the top three concerns for your state's Department of Transportation regarding property casualty costs?

	Legal Structure	Legal Limits	Insurance Costs	Loss Control	Claims Admin.	Excess Ins. Costs	SIR	Limits of Coverage	State Laws	Other
A										
Z	na	na	na	na	na	na	na	na	na	na
B	na	na	na	na	na	na	na	na	na	na
C	na	na	na	na	na	na	na	na	na	na
D	na	na	na	na	na	na	na	na	na	na
E	na	na	na	na	na	na	na	na	na	na
F	na	na	na	na	na	na	na	na	na	na
G	na	na	na	na	na	na	na	na	na	na
H	na	na	na	na	na	na	na	na	na	na
I	3	1	5	7	2	9	6	8	4	Liability
J	na	na	na	na	na	na	na	na	na	na
K	na	na	na	na	na	na	na	na	na	na
L	na	na	na	na	na	na	na	na	na	na
M	na	na	na	na	na	na	na	na	na	na
N				2	3				1	
O				1				2		
P	na	na	na	na	na	na	na	na	na	na
Q	3		2						1	

na = no answer

Appendix 5 - Exposures

Appendix 5
Page 1

Unadjusted Exposure Measures

State Identifier	Pop/Square Mile	Vehicle Miles per Capita	Personal Income per Capita	Rural Lane Miles	Urban Lane Miles
	(A)	(B)	(C)	(D)	(E)
AZ	52	10,069	28,442	77,080	51,491
B	229	8,471	34,351	204,299	86,220
C	196	8,021	32,160	4,091	5,320
D	62	14,398	24,650	130,578	23,310
E	145	11,876	30,005	141,812	48,946
F	43	11,298	30,566	40,336	6,316
G	65	11,058	35,861	234,665	36,579
H	53	11,505	25,725	177,652	23,592
I	116	9,510	32,157	187,243	48,234
J	263	8,015	35,019	175,726	203,631
K	178	10,284	31,954	174,789	80,565
L	5	17,796	34,306	51,951	5,574
M	52	13,249	28,089	199,467	34,349
N	1	7,664	34,454	24,217	4,906
O	53	10,433	30,560	209,410	25,316
P	141	11,621	27,172	102,511	36,818
Q	85	11,705	30,608	217,006	42,591

Notes: All data is from Appendix 5, Page 3.

Adjusted Exposure Measures

ST	Pop/ Square Mile	Vehicle Miles per Capita	Personal Income per Capita	Rural Lane Miles	Urban Lane Miles	WC Composite Exposure	GL Composite Exposure	Auto Composite Exposure	Other Composite Exposure
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
AZ	15,856	28,334	28,442	17,266	35,477	25,287	24,854	26,669	25,699
B	69,396	23,839	34,351	45,763	59,406	45,253	44,131	42,722	44,273
C	59,375	22,572	32,160	916	3,665	27,204	30,593	18,153	21,897
D	18,951	40,516	24,650	29,249	16,061	25,292	26,793	28,406	26,964
E	43,893	33,418	30,005	31,766	33,724	34,117	34,878	33,870	34,037
F	12,986	31,793	30,566	9,035	4,352	20,072	21,703	18,378	18,687
G	19,611	31,117	35,861	52,565	25,203	32,806	31,217	33,252	33,447
H	16,193	32,375	25,725	39,794	16,255	25,506	25,464	27,546	26,878
I	35,255	26,761	32,157	41,942	33,233	33,596	32,669	32,804	33,445
J	79,912	22,555	35,019	39,363	140,302	58,572	54,089	62,335	60,562
K	54,041	28,939	31,954	39,153	55,509	40,532	39,797	40,436	40,664
L	1,590	50,077	34,306	11,637	3,840	22,158	24,756	24,404	22,714
M	15,681	37,281	28,089	44,681	23,666	28,812	28,502	32,278	30,960
N	349	21,565	34,454	5,425	3,380	16,684	16,695	12,958	14,095
O	16,166	29,359	30,560	46,908	17,443	27,986	26,984	28,691	28,747
P	42,864	32,700	27,172	22,962	25,368	30,238	31,876	29,383	29,705
Q	25,871	32,937	30,608	48,609	29,345	32,521	31,680	34,234	33,827
Weights:									
WC	20.0%	15.0%	35.0%	15.0%	15.0%				
GL	25.0%	25.0%	30.0%	10.0%	10.0%				
Auto	10.0%	35.0%	10.0%	20.0%	25.0%				
Other	15.0%	25.0%	20.0%	20.0%	20.0%				

Notes: All exposures from Page 1 have been adjusted to a common level.

OCTOBER 2006 (Received Date)	GENERAL MEASURES						
	STATE	2004 NET LAND AREA (SQ. MILES)			2004 POPULATION		
	RURAL	URBAN	PERCENT URBAN	RURAL (1,000)	URBAN (1,000)	PERCENT URBAN	TOTAL/ SQUARE MILE
Alabama	47,545	3,199	6.3	2,105	2,485	54.1	90
Alaska	570,954	997	0.2	250	407	61.9	1
Arizona	111,063	2,572	2.3	1,052	4,887	82.3	52
Arkansas	51,260	808	1.6	1,449	1,330	47.9	53
California	144,632	11,327	7.3	4,800	36,279	88.3	263
Colorado	101,252	2,466	2.4	1,088	3,577	76.7	45
Connecticut	2,773	2,072	42.8	385	3,118	89.0	723
Delaware	1,625	329	16.8	191	653	77.4	432
District Of Columbia	-	61	100.0	-	551	100.0	9,033
Florida	44,389	9,538	17.7	2,102	15,816	88.3	332
Georgia	48,241	9,665	16.7	2,265	6,810	75.0	157
Hawaii	5,661	762	11.9	320	937	74.5	196
Idaho	82,081	666	0.8	624	768	55.2	17
Illinois	50,111	5,473	9.8	2,829	9,885	77.7	229
Indiana	33,774	2,093	5.8	2,096	3,449	62.2	155
Iowa	54,718	1,151	2.1	1,185	1,792	60.2	53
Kansas	80,570	1,245	1.5	805	1,758	68.6	31
Kentucky	38,248	1,480	3.7	1,867	2,305	55.2	105
Louisiana	40,121	3,441	7.9	1,331	3,137	70.2	103
Maine	30,276	586	1.9	776	545	41.3	43
Maryland	7,972	1,802	18.4	763	4,837	86.4	573
Massachusetts	3,989	3,851	49.1	561	5,838	91.2	816
Michigan	52,294	4,510	7.9	2,561	7,557	74.7	178
Minnesota	77,024	2,586	3.2	1,576	3,570	69.4	65
Mississippi	44,899	2,008	4.3	1,644	1,286	43.9	62
Missouri	66,631	2,255	3.3	2,122	3,752	63.9	85
Montana	145,232	320	0.2	493	443	47.3	6
Nebraska	76,354	518	0.7	672	1,107	62.2	23

OCTOBER 2006 (Received Date)	<i>GENERAL MEASURES – Continued</i>						
	STATE	2004 NET LAND AREA (SQ. MILES)			2004 POPULATION		
	RURAL	URBAN	PERCENT URBAN	RURAL (1,000)	URBAN (1,000)	PERCENT URBAN	TOTAL/ SQUARE MILE
Nevada	108,599	1,227	1.1	992	1,746	63.8	25
New Hampshire	8,250	718	8.0	659	656	49.9	147
New Jersey	3,616	3,801	51.2	456	8,262	94.8	1,175
New Mexico	120,622	734	0.6	767	1,205	61.1	16
New York	41,751	5,463	11.6	3,333	15,825	82.6	406
10/ North Caro- lina	43,232	5,479	11.2	2,847	5,835	67.2	178
North Dakota	68,709	267	0.4	299	335	52.8	9
Ohio	35,377	5,571	13.6	2,315	9,149	79.8	280
Oklahoma	56,567	12,100	17.6	1,358	2,191	61.7	52
Oregon	94,779	1,218	1.3	976	2,665	73.2	38
Pennsylvania	39,370	5,447	12.2	2,822	9,608	77.3	277
Rhode Island	438	607	58.1	56	1,020	94.8	1,030
South Caro- lina	27,245	2,865	9.5	1,612	2,642	62.1	141
South Da- kota	75,635	250	0.3	412	358	46.5	10
Tennessee	38,141	3,076	7.5	1,587	4,376	73.4	145
Texas	253,339	8,458	3.2	6,323	13,810	68.6	77
Utah	80,234	1,910	2.3	308	2,222	87.8	31
Vermont	9,015	235	2.5	387	236	37.9	67
Virginia	35,451	4,143	10.5	2,072	5,483	72.6	191
Washington	64,158	2,386	3.6	1,283	4,973	79.5	94
West Virginia	23,496	582	2.4	975	833	46.1	75
Wisconsin	52,609	1,701	3.1	2,395	3,916	62.1	116
Wyoming	96,570	530	0.5	206	303	59.5	5
U.S. Total	3,390,892	146,549	4.1	72,352	226,528	75.8	84
Puerto Rico	1,453	1,972	57.6	183	3,731	95.3	1,143
Grand Total	3,392,345	148,521	4.2	72,535	230,259	76.0	86

Appendix 6 – Cash Versus Accrual

Appendix 6

Ratio of Ultimate Cost Divided by Cash Flow

Coverage	2006/07	2007/08	2008/09
General Liability	1.23	1.12	1.13
Workers' Compensation	1.07	1.08	1.07
Auto Liability	1.15	1.1	1.04
Auto Physical Damage	1.03	1.04	1.04
Other	0.85	0.79	0.78
Total	1.1	1.08	1.09

From the BRS Risk Study dated August 9, 2007

Appendix 7 – Responses for all Lines

Appendix 7
Page 1

Workers' Compensation Responses

	Workers' Comp Coverage Guaranteed Cost or Self-Insured	Premium Cost	Program Year	SIR	Limit	Cost	Year	Self - Insured Adm. of Claims Performed In House or Third Party (TPA)	WC Program Work on Cash Flow or Accrual Basis
A	Self-insured			unlimited	unlimited	3,322,736	2006-07	In-house	Cash flow
Z	Self-insured			n/a	n/a	28,500,000	FY 2008	In-house	Cash flow
B	Self-insured								
C	Self-insured								
D	Self-insured				1,000,000	7,300,000	2007	TPA	Cash flow
E	Self-insured					33,000,000	08-09	TPA	
F	Self-insured								
G	Self-insured			1.65 MIL				In-house	Cash flow
H	Self-insured							TPA	Cash flow
I	Self-insured							In-house	Cash flow
J	Self-insured								
K	Guaranteed cost	Incomplete Answer	Incomplete Answer						
L	Self-insured			unknown	unknown	unknown	unknown	In-house	
M	no response								
N	Self-insured			unlimited		6,500,000	2009	TPA	Cash flow
O	Self-insured			NA	150,000/agency	2,000,000	each year	TPA	Accrual
P	Guaranteed cost	11,167,180	2007						
Q	Self-insured			first dollar	none	3,500,000	2007	In-house	Accrual

Definitions: For in-house claims administration, the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Workers' Compensation Responses

	What Key Elements Are Included In Cost?					What Is Included In Cost - Other?	Other Response	Is WC Coverage Part Of State Program Or Stand Alone?
A Z	Losses	Legal costs	Loss control	Claims adm.	Excess insurance			State program
B	Losses	-	-	-	-	-		Stand-alone
C	-	-	-	-	-	-		
D	Losses	Legal costs	Loss control	Claims adm.	Excess insurance	-		State program
E	Losses	Legal costs	-	Claims adm.	-	-		State program
F	-	-	-	-	-	-		
G	Losses	Legal costs	Loss control	Claims adm.	Excess insurance	-		State program
H	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
I	Losses	Legal costs	-	Claims adm.	-	-		State program
J								
K								
L	-	-	-	-	-	-		State program
M								
N	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
O	Losses	Legal costs	-	Claims adm.	-	Other	medical expenses	State program
P								
Q	Losses	Legal costs	-	-	-	-		Stand-alone

General Liability Responses

	Is General Liability Program Guaranteed Cost or Self-Insured?	Premium Cost	Pro-gram Year	SIR	Limit	Cost	Year	Self -Insured Administration of Claims Performed In House or Third Party?	GL Program Work on Cash Flow or Accrual Basis?
AZ	Self-insured			7,000,000	Purchased 125 Mil unlimited over that amount	10,973,392	2006-07	In-house	Cash flow
B	Self-insured			n/a	none	500,000	2006	In-house	Cash flow
C									
D	Self-insured				\$500,000 Cap	1,100,000	2007	In-house	Cash flow
E	Self-insured				300k/1m	3,888,300	08-09	In-house	
F	Self-insured			1,000	400,000	107,087	FY2008	In-house	Cash flow
G	Self-insured			1,000,000	1,000,000			In-house	Accrual
H	Self-insured							In-house	Cash flow
I	Self-insured			4,000,000	50 million	753,500	2006 for excess	In-house	Cash flow
J									
K	Guaranteed cost	Incomplete Answer	Incomplete Answer						
L	Self-insured			\$1,000,000	\$5,000,000 \$175,000/claimant/claim			In-house	Cash flow
M	Self-insured					203,977	7/1/07-08	In-house	Accrual
N	Self-insured			unlimited		1,500,000	2009 projection	In-house	Cash flow
O	Self-insured							In-house	Cash flow
P	Guaranteed cost	6,751,536	2007						
Q	Self-insured			first dollar	none	5,000,000	2007	In-house	Accrual

Definitions: For in-house claims administration, the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

General Liability Responses

	What Key Elements Are Included In Cost?					What Is Included In Cost - Other?	Other Response	Is GL Coverage Part Of State Program Or Stand Alone?
A Z	Losses	Legal costs	Loss control	Claims adm.	Excess insurance			State program
B	Losses	-	-	-	-	-		Stand-alone
C								
D	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
E	Losses	Legal costs	-	Claims adm.	-	-		State program
F	Losses	Legal costs	-	Claims adm.	-	-		State program
G	Losses	Legal costs	-	Claims adm.	Excess insurance	Other	Admin costs/Dividends	Stand-alone
H	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
I	Losses	Legal costs	-	Claims adm.	Excess insurance	-		State program
J								
K								
L	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
M	Losses	-	-	Claims adm.	-	-		State program
N	Losses	Legal costs	-	Claims adm.	-	-		State program
O	Losses	Legal costs	-	-	-	-		State program
P								
Q	Losses	Legal costs	-	-	-	-		Stand-alone

Auto Liability Responses

	Is Auto Liability Program Guaranteed Cost or Self-Insured?	Premium Cost	Program Year	SIR	Limit	Cost	Year	Self-Insured Administration of Claims Performed In House or Third Party?	AL Program Work on Cash Flow or Accrual Basis?
A									
Z	Self-insured			7,000,000	Purchased 125 Mil unlimited over that amount	1,417,819	2006-07	In-house	Cash flow
B	Self-insured			n/a	none	500,000	2006	In-house	Cash flow
C									
D	Self-insured				\$500,000	2,300,000	2007	In-house	Cash flow
E	Self-insured					2,472,400	08-09	In-house	
F	Self-insured			0	400,000	254,185	FY2008	In-house	Cash flow
G	Self-insured			1,000,000	300,000 /1,000,000			Third party claims administrator	Accrual
H									
I	Self-insured			2500				In-house	Cash flow
J									
K	Guaranteed cost	Incomplete Answer	Incomplete Answer						
L	Self-insured			same as GL				In-house	Cash flow
M	Self-insured				\$175,000 /claimant /claim	236,437	7/1/07-08	In-house	Accrual
N	Self-insured			unlimited		750,000	2009 projection	In-house	Cash flow
O	Self-insured							In-house	Cash flow
P	Guaranteed cost	1,005,120	2007						
Q	Self-insured			first dollar	none	1,600,000	2007	In-house	Accrual

Definitions: For in-house claims administration, the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Auto Liability Responses

	What Key Elements Are Included In Cost?					What Is Included In Cost - Other?	Other Response	Is Auto Liability Coverage Part Of State Program Or Stand Alone?
A Z	Losses	Legal costs	Loss control	Claims adm.	Excess insurance			State program
B	Losses	-	-	-	-	-		Stand-alone
C								
D	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
E	Losses	Legal costs	-	Claims adm.	-	-		State program
F	Losses	Legal costs	-	Claims adm.	-	-		State program
G	Losses	Legal costs	-	Claims adm.	Excess insurance	Other	Admin & Dividends	State program
H								
I	Losses	Legal costs	-	Claims adm.	-	-		State program
J								
K								
L	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
M	Losses	-	-	Claims adm.	-	-		State program
N	Losses	Legal costs	-	Claims adm.	-	-		State program
O	Losses	Legal costs	-	-	-	-		State program
P								
Q	Losses	Legal costs	-	-	-	-		Stand-alone

Auto Physical Liability Responses

	Is APD Liability Program Guaranteed Cost or Self-Insured?	Premium Cost	Pro-gram Year	SIR	Limit	Cost	Year	Self -Insured Administration of Claims Performed In House or Third Party?	APD Program Work on Cash Flow or Accrual Basis?
A									
Z	Self-insured			Un-limited		897,090	2006-07	In-house	Cash flow
B	Self-insured			0	0	not available		In-house	Cash flow
C									
D									
E		0							
F	Self-insured			100%					
G	Self-insured							In-house	Accrual
H									
I	Self-insured			500				In-house	Cash flow
J									
K	Guaranteed cost	Incomplete Answer	Incomplete Answer						
L	Self-insured			same as GL				In-house	Cash flow
M									
N	Self-insured								
O	Self-insured							In-house	Cash flow
P									
Q									

Definitions: For in-house claims administration, the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Auto Physical Responses

	What Key Elements Are Included In Cost?						What Is Included In Cost - Other?	Other Response	Is Auto Physical Coverage Part Of State Program Or Stand Alone?
	Losses	Legal costs	Loss control	Claims adm.					
A									
Z	Losses		Loss control	Claims adm.				State program	
B	Losses	-	-	-	-	-		Stand-alone	
C									
D									
E									
F	-	-	-	-	-	-			
G	Losses	Legal costs	-	Claims adm.	-	Other	Administration costs	State program	
H									
I	Losses	Legal costs	-	Claims adm.	-	-		State program	
J									
K									
L	Losses	Legal costs	Loss control	Claims adm.	-	-		State program	
M									
N	-	-	-	-	-	-			
O	Losses	Legal costs	-	-	-	-		State program	
P									
Q									

Employment Practices Liability Responses

	Is EPL Liability Program Guaranteed Cost or Self-Insured?	Premium Cost	Program Year	SIR	Limit Purchased	Cost	Year	Self -Insured Administration of Claims Performed In House or Third Party?	EPL Program Work on Cash Flow or Accrual Basis?
A					125 Mil				
Z	Self-insured			5 MIL	unlimited over that amount			In-house	Cash flow
B	Self-insured							In-house	Cash flow
C									
D	Self-insured				\$500,000 Cap	\$125,000	2007	In-house	Cash flow
E									
F	Self-insured			1000	400,000	Incl w/GL (Tort)	FY 2008	In-house	Cash flow
G	Self-insured							In-house	
H									
I	Self-insured							In-house	Cash flow
J									
K	Guaranteed cost	Incomplete Answer	Incomplete Answer						
L	Self-insured				same as GL			In-house	Cash flow
M		See Other Section							
N	Self-insured								
O	Self-insured							In-house	Cash flow
P									
Q	Self-insured					N/A		In-house	Cash flow

Definitions: For in-house claims administration, the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Employment Practices Liability Responses

	What Key Elements Are Included In Cost?					What Is Included In Cost - Other?	Other Response	Is Environmental Coverage Part Of State Program Or Stand Alone?
A								
Z	Losses	Legal costs	Loss control	Claims adm.	Excess insurance			State program
B	Losses	-	-	-	-	-		Stand-alone
C								
D	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
E								
F	Losses	Legal costs	-	Claims adm.	-	-		State program
G	-	-	-	-	-	-		Stand-alone
H								
I	Losses	Legal costs	-	Claims adm.	-	-		State program
J								
K								
L	Losses	Legal costs	Loss control	Claims adm.	Excess insurance	-		State program
M								
N	-	-	-	-	-	-		
O	Losses	Legal costs	-	-	-	-		State program
P								
Q	Losses	-	-	-	-	-		Stand-alone

Environmental Liability Responses

	Is Environmental Liability Program Guaranteed Cost or Self-Insured?	Premium Cost	Pro-gram Year	SIR	Limit	Cost	Year	Self - Insured Administration of Claims: Performed In House or Third Party?	Environmental Liability Program Work on Cash Flow or Accrual Basis?
A									
Z	Self-insured			unlimited	unlimited	1,049,899	2006-07	In-house	Cash flow
B	Self-insured							In-house	Cash flow
C									
D	Self-insured				\$500,000 Cap	-0-	2007	In-house	Cash flow
E	Self-insured			5m				TPA	
F	Self-insured			1000	400,000	Incl w/GL (Tort)	FY2008	In-house	Cash flow
G	Guaranteed cost								
H									
I	Self-insured			2.5 million /2.7 mill/aggregate	300 million	1.4 million	2006 for excess	TPA	Cash flow
J									
K	Guaranteed cost	Incomplete Answer	Incomplete Answer						
L	Self-insured			same as GL				In-house	Cash flow
M	Self-insured			\$25,000	\$1,000 MIL	\$56,404 (ODOT only)	8/1/07-08	TPA	Accrual
N	Self-insured								
O		NA to Iowa							
P									
Q	Self-insured			first dollar	none	0	2007	In-house	Accrual

Definitions: For in-house claims administration, the claims are tracked, paid and reserved by DOT personnel. A TPA is a Third Party Claims Administrator who is contracted to track, pay and reserve claims by DOT but is not a direct employee.

Environmental Liability Responses

	What Key Elements Are Included In Cost?					What Is Included In Cost - Other?	Other Response	Is Environmental Coverage Part Of State Program Or Stand Alone?
A								
Z	Losses	Legal costs	Loss control	Claims adm.				State program
B	Losses	-	-	-	-	-		Stand-alone
C								
D	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
E	Losses	-	-	-	-	-		State program
F	Losses	Legal costs	-	Claims adm.	-	-		State program
G								
H								
I	Losses	Legal costs	-	Claims adm.	Excess insurance	-		State program
J								
K								
L	Losses	Legal costs	Loss control	Claims adm.	-	-		State program
M	Losses	-	-	Claims adm.	Excess insurance	-		State program
N	-	-	-	-	-	-		
O								
P								
Q	Losses	Legal costs	-	-	-	-		Stand-alone

Other Liability Responses

	Does Your Agency Maintain Any Other Coverage Not Previously Listed?	Other Coverages	Is the Other Coverage Program Guaranteed Cost or Self-insured?	Premium	Year	Self-Insured Retention	Limit	Cost	Year
A Z	Yes	Aircraft, Medical Malpractice, International	Self-insured and guaranteed cost			\$0 to 5M	AirC 200M medmal 25M 125M Intl	180,760	2006-07
B	No								
C									
D	No								
E	Yes	Fine Arts, Crime, BR, Boiler	Guaranteed cost						
F	No								
G			Guaranteed cost						
H									
I	No								
J									
K		Incomplete Answer	Self-insured			Incomplete Answer	Incomplete Answer	Incomplete Answer	Incomplete Answer
L	No								
M	Yes	Public Officials +EPL international and rural airport	Self-insured			\$150,000	\$5M ea/\$35M aggreg.	\$166,265 (ODOT only)	10/30/07-08
N	Yes		Self-insured			1,000,000	50,000,000	850,000	2009 projection
O									
P									
Q	Yes	Major building property insurance	Guaranteed cost	186,000	2007				

Other Liability Responses

A Z	Self - Insured Administration Of Claims Performed In House Or Third Party?	Other Program Work On Cash Flow Or Accrual Basis? Varies by prog.	What Key Elements Are Included In Cost?					What Is Included In Cost - Other?	Other Response	Is Other Coverage Part Of State Program Or Stand Alone?
			Losses	Legal costs	Loss control	Claims adm.	Excess ins.			
B										
C										
D										
E										
F										
G										
H										
I										
J										
K	TPA	Accrual	-	-	-	-	-	-	Stand-alone	
L										
M	In-house	Accrual	Losses	-	-	Claims adm.	Excess ins.	-	State Program	
N	In-house	Cash flow	Losses	Legal costs	-	Claims adm.	Excess ins.	-	State Program	
O										
P										
Q										

Appendix 8 - Original Survey

ARIZONA DEPARTMENT OF TRANSPORTATION
Cost of Risk Survey

The Arizona Department of Transportation (AzDOT) has contracted with Bickmore Risk Services (BRS) to evaluate the agency's cost of risk. As part of this effort, we are interested in learning how other transportation agencies assess their cost of risk. In furtherance of this objective we are asking you to complete the survey below. This information will be used to assist AzDOT in improving its current practices.

Person completing this survey:

Jurisdiction:

Department and Section:

Telephone: Email:

You may complete the survey electronically by clicking on the following link :

http://www.bickmoreriskservices.com/Perseus/se.ashx?s=527E842D4A7CF36A

Alternatively, you may complete the attached Microsoft Word version of the survey. You may return the paper survey via fax; via email; or U.S. Mail to:

Bickmore Risk Services
1831 K Street
Sacramento, CA 95811

If you have any questions or concerns about this letter or survey, please contact Sandra Spiess.

- 1. For this study we are using exposure information from the U.S. Department of Transportation Federal Highway Administration website (http://www.fhwa.dot.gov). If you are aware of any incorrect information for your state housed on that website, please indicate the correct information below:

- 2. Program Structure Information (by coverage):

A.1 Workers' Compensation

†Guaranteed Cost Premium Year
†Self-Insured SIR Limit Cost Year

A.2 If self-insured, is the administration of your state's WC claims performed in-house or by a third party claims administrator?

Performed in-house Performed by a third party claims administrator

A.3 Does your state's WC Program work on a cash flow or accrual basis?

Cash Flow Accrual

A.4 What is included in your cost? Please check all that apply:

Losses Legal Costs Loss Control Claims Admin Excess Insurance Other _____

A.5 Is your state's WC coverage part of state program or stand-alone?

State Program Stand Alone

B.1 General Liability

Guaranteed Cost Premium _____ Year _____
 Self-Insured SIR _____ Limit _____ Cost _____ Year _____

B.2 If self-insured, is the administration of your state's General Liability claims performed in-house or by a third party claims administrator?

Performed in-house Performed by a third party claims administrator

B.3 Does your state's General Liability Program work on a cash flow or accrual basis?

Cash Flow Accrual

B.4 What is included in your cost? Please check all that apply:

Losses Legal Costs Loss Control Claims Admin Excess Insurance Other _____

B.5 Is your state's General Liability coverage part of state program or stand-alone?

State Program Stand Alone

C.1 Auto Liability

Guaranteed Cost Premium _____ Year _____
 Self-Insured SIR _____ Limit _____ Cost _____ Year _____

C.2 If self-insured, is the administration of your state's Auto Liability claims performed in-house or by a third party claims administrator?

Performed in-house Performed by a third party claims administrator

C.3 Does your state's Auto Liability Program work on a cash flow or accrual basis?

Cash Flow Accrual

C.4 What is included in your cost? Please check all that apply:
 Losses Legal Costs Loss Control Claims Admin Excess In-
insurance Other _____

C.5 Is your state's Auto Liability Program part of state program or stand-alone?
 State Program Stand Alone

D.1 **Auto Physical Damage (APD)**

Guaranteed Cost Premium _____ Year _____
 Self-Insured SIR _____ Limit _____ Cost _____ Year _____

D.2 If self-insured, is the administration of your state's APD claims performed in-house or by a third party claims administrator?
 Performed in-house Performed by a third party claims administrator

D.3 Does your state's APD Program work on a cash flow or accrual basis?
 Cash Flow Accrual

D.4 What is included in your cost? Please check all that apply:
 Losses Legal Costs Loss Control Claims Admin Excess In-
insurance Other _____

D.5 Is your state's APD Program part of state program or stand-alone?
 State Program Stand Alone

E.1 **Employment Practices Liability (EPL)**

Guaranteed Cost Premium _____ Year _____
 Self-Insured SIR _____ Limit _____ Cost _____ Year _____

E.2 If self-insured, is the administration of your state's EPL claims performed in-house or by a third party claims administrator?
 Performed in-house Performed by a third party claims administrator

E.3 Does your state's EPL Program work on a cash flow or accrual basis?
 Cash Flow Accrual

E.4 What is included in your cost? Please check all that apply:
 Losses Legal Costs Loss Control Claims Admin Excess In-
insurance Other _____

E.5 Is your state's EPL Program part of state program or stand-alone?
 State Program Stand Alone

F.1 **Environmental Liability & Property**

Guaranteed Cost Premium _____ Year _____
 Self-Insured SIR _____ Limit _____ Cost _____ Year _____

- F.2 If self-insured, is the administration of your state's Environmental Coverage Program claims performed in-house or by a third party claims administrator?
 Performed in-house Performed by a third party claims administrator
- F.3 Does your state's Environmental Coverage Program work on a cash flow or accrual basis?
 Cash Flow Accrual
- F.4 What is included in your cost? Please check all that apply:
 Losses Legal Costs Loss Control Claims Admin Excess Insurance
 Other _____
- F.5 Is your state's Environmental Coverage Program part of state program or stand-alone?
 State Program Stand Alone

G.1 **Other Coverage** _____
(Please Specify)

- Guaranteed Cost Premium _____ Year _____
 Self-Insured SIR _____ Limit _____ Cost _____ Year _____

- G.2 If self-insured, is the administration of claims for this program performed in-house or by a third party claims administrator?
 Performed in-house Performed by a third party claims administrator
- G.3 Does this Program work on a cash flow or accrual basis?
 Cash Flow Accrual
- G.4 What is included in your cost? Please check all that apply:
 Losses Legal Costs Loss Control Claims Admin Excess Insurance
 Other _____
- G.5 Is this program part of a state program or stand-alone?
 State Program Stand Alone

3. Safety and Loss Control

- A. Please provide a brief, general description of your safety and loss control practices.

- B. Does your state have any special or particularly effective programs?
 Yes No
- C. If yes, please briefly describe the program(s):

- E. Please briefly describe how the program(s) have contributed to a reduction in the cost of risk for your state:

4. Legal Environment

- A. Does your state employ a comparative or contributory negligence court system?

- B. Have there been any recent changes in the legal handling of claims in your state? Yes No

- C. If yes, please briefly explain the change(s)

- D. Does your state limit legal fees in any way? Yes No

- E. If yes, please indicate the limits and cite the specific statute or law.

- F. Do your state laws permit bifurcation of liability and damages in trial? Yes No

- G. If so, to what extent is bifurcation permitted?

- I. Does your state impose caps on recovery to help protect governmental entities in your state?

Yes No

- J. If so, please briefly describe the caps on recovery in place

- K. Does your state impose restrictions in any way to help restrict the extent of liability to your state? (legal, political, statutory, or immunities)

Yes No

- L. If yes, please provide a brief explanation.

M. Does your state have a ‘government tort claims act’ that outlines the legal process for making a tort claim or filing for a lawsuit against your state?

Yes No

N. If yes, please provide the specific statutory section or law.

O. If so, please briefly describe the restrictions in place

P. Does the attorney general’s office handle the litigation or settlement of claims against the DOT in your state? Yes No

Q. If No, please explain who handles the legal aspects of claims for your state?

5. Public Records

A. Does your state have an “open records law” or public records act” in place?

Yes No

B. If yes, what is that law?

C. Is there a category(s) of information that is restricted? Yes No

D. If yes, what category(s) is restricted?

6. General Information

A. What are the three biggest sources of loss for your state’s DOT?

Design Maintenance Signage Lighting
 Legal Costs Terrorism Natural Catastrophe Other _____

B. Please rank the top three concerns for your state’s DOT regarding property casualty costs:

_____ Legal Structure _____ Legal Limits _____ Insurance Costs
_____ Loss Control _____ Claims Administration _____ Excess Insurance
Costs _____ Self-Insured Retention _____ Limits of Coverage
_____ State Laws _____ Other _____

- C. Would you be interested in joining a Department of Transportation risk management association if one was formed? †Yes †No

7. Contact Information

- A.1 Name of person completing survey _____
A.2 Section of the survey completed _____
A.3 Phone Number _____
A.4 E-mail address _____
- B.1 Name of person completing survey _____
B.2 Section of the survey completed _____
B.3 Phone Number _____
B.4 E-mail address _____
- C.1 Name of person completing survey _____
C.2 Section of the survey completed _____
C.3 Phone Number _____
C.4 E-mail address _____
- D.1 Name of person completing survey _____
D.2 Section of the survey completed _____
D.3 Phone Number _____
D.4 E-mail address _____
- E.1 Person to contact regarding questions on this survey _____
E.2 Phone Number _____
E.3 E-mail address _____

If you would like a copy of the final report for this project, please provide a name and e-mail or postal address for the person who should receive the report.

THANK YOU FOR YOUR ASSISTANCE!

John Semmens
Project Manager
Arizona Department of Transportation
Arizona Transportation Research Center
206 S. 17 Ave., MD 075R
Phoenix, AZ 85007

Appendix 9 AGRiP

Appendix 9
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2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY – AGRiP⁴

State	As Of	Tort Cap Per Claimant	Tort Cap Per Occurrence	Gov Immunity (No - Yes)		If Yes, Exceptions to Immunity	Liability Standard, i.e., Comparative Negligence, Joint & Several Liability, Etc.	Proposed Legislation	Additional Comments
AL	4/25/08	100,000	300,000		Yes		Joint and Several Liability	No	
AK	2/19/08	400,000	none				No response	No	See notes
AZ	2/26/08	0	0		Yes		Comparative Neg.		
AR		0	0						
CA	6/9/08	0	0				See Notes		See notes
CO	2/19/08	150,000	600,000		Yes	See Notes	n/a	No	See notes
CT		0	0						
DE			300,000						
FL	2/27/08	100,000	200,000						
GA	2/15/08	n/a	n/a		Yes	See Notes	Comparative Neg.	See Notes	See notes
ID	2/14/08	n/a	500,000		Limited		Comparative Neg.		
IL	2/28/08	0	0		Yes	See Notes	Joint and Several and Comparative	See Notes	
IN	3/26/08	300000 on or before 12/31/05; 500,000 between 1/1/06 and 12/31/07; 700,000 on and after 1/1/08	5,000,000		Yes	See Notes	Contributory		See notes
IA	2/14/08	unlimited	unlimited	No			Comparative Neg.		
KS	2/19/08	n/a	500,000		Yes	See Notes	Joint and several and comparative	See Notes	
KY	2/19/08	200,000	350,000		Yes	See Notes	Comparative Neg.	See Notes	
LA	2/14/08	n/a	\$500,000 non economic damages	No		See Notes	Comparative	No	See notes
ME	2/27/08		400,000		Yes	See Notes	Joint and several and Comparative	See Notes	See Notes
MD	2/27/08	200,000	500,000	no			Contributory	see notes	
MA		100,000							
MI	2/19/08	n/a	n/a		Yes	See Notes	See Notes	No	

⁴ AGRiP (Association of Government Risk Pools) 2008 State Tort Cap and Governmental Immunity Survey

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY – AGRIP

State	As Of	Tort Cap Per Claimant	Tort Cap Per Occurrence	Gov Immunity (No - Yes)		If Yes, Exceptions to Immunity	Liability Standard, i.e., Comparative Negligence, Joint & Several Liability, Etc.	Proposed Legislation	Additional Comments
MN	2/14/08	400,000	1,200,000	No			See Notes	See Notes	See notes
MN	2/14/08	400,000	1,200,000	No			See Notes	See Notes	See notes
MS			500,000						
MO	4/4/08	362,849	2,418,992		Yes	See Notes	Joint and Several and comparative	No	
MT	2/19/08	750,000	1,500,000	No		See Notes	Joint and several and comparative	See Notes	See notes
NE	2/14/08	1,000,000	5,000,000		Yes	See Notes	See Notes	See Notes	
NV	2/14/08	75,000	n/a	No			Comparative neg. Joint and several	See Notes	See notes
NH	3/26/08	275,000	925,000		Limited	See Notes	Comparative Neg.	No	See Notes
NJ	2/14/08	n/a	n/a		Yes	Defined in Statute	Comparative	No	
NM	2/22/08	750,000	1,050,000		Yes	See Notes	Comparative Neg.	No	See notes
NY		0	0						
NC	2/19/08	n/a	n/a		Yes	See Notes	Comparative neg. Joint and several	See Notes	See notes
ND	2/20/08	250,000	500,000	No			Comparative Fault		See notes
OH	2/14/08	\$250,000 (non-economic damages)	n/a		Yes	See Notes	Comparative Neg.	No	See notes
OK	2/26/08	See Notes	1,000,000		Yes	See Notes	See Notes	No	
OR	3/4/08	100,000	500,000		Yes	See notes	Joint and several and comparative	See notes	See notes
PA	5/8/08	500,000 and delay damages	500,000 and delay damages		Yes	See Notes-8 Exceptions	Modified Comparative Fault (if over 50% Plaintiff is barred); Jt. and Several Liability	No	See notes
RI	2/29/08	100,000			Limited	See Notes	"Pure" Comparative negligence and Joint and several liability	See notes	See notes
SC	4/3/08	300,000	600,000		Limited	There are 40 exceptions - too numerous to list, see the link: http://www.scstateho use.net/CODE/t15c078.htm	Comparative negligence generally - Joint and Several applies only to private defendants	No	

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY – AGRIP

State	As Of	Tort Cap Per Claimant	Tort Cap Per Occurrence	Gov Immunity (No - Yes)		If Yes, Exceptions to Immunity	Liability Standard, i.e., Comparative Negligence, Joint & Several Liability, Etc.	Proposed Legislation	Additional Comments
SD		0	0						
TN	4/14/08	300,000	700,000		Yes	See Notes	Comparative Neg.	No	
TX	3/13/08	250,000	500,000					No	See notes
TX Co.	3/4/08	100,000 In-jury/100,000 PD	300,000		Yes	See notes	See notes	No	
UT	3/25/08	General Liability 583,900 Property Damage limit 233,600	2,000,000		Yes	Questions regarding proprietary functions	Comparative Negligence	no	
VT	2/14/08	n/a	n/a		Yes	proprietary functions	Joint & Several	No	See notes
VA	2/19/08	n/a	n/a		Yes	See Notes	Joint & Several	No	See notes
WA	2/14/08	n/a	n/a	No		n/a	Joint & Several		
WV	2/19/08	n/a	n/a		Yes		Comparative		
WI	5/6/08	GenLiab. 50,000 AutoLiab. 250,000	n/a		Yes	ministerial or non-discretionary acts	Comparative	No	See notes
WY	3/6/08	250,000	500,000		Yes	See Notes	Comparative Neg.	No	

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

AL	
AK	AS09.17.010-The \$400K cap can be pierced by "severe disfigurement" or "severe permanent physical impairment". In Peters v. City of Barrow, "disfigurement is severe if a reasonable person would find that the injury mars the plaintiff's physical appearance and causes a degree of unattractiveness sufficient to bring negative attention or embarrassment", thus lowering the bar to a point where the \$400K cap is meaningless. However, in no event should non-economic damages exceed \$1 million or the person's life expectancy X \$25K per person.
AZ	12-820.01. Absolute immunity. A. A public entity shall not be liable for acts and omissions of its employees constituting either of the following: 1. The exercise of a judicial or legislative function. 2. The exercise of an administrative function involving the determination of fundamental governmental policy. B. The determination of a fundamental governmental policy involves the exercise of discretion and shall include, but is not limited to: 1. A determination of whether to seek or whether to provide the resources necessary for any of the following: (a) The purchase of equipment. (b) The construction or maintenance of facilities. (c) The hiring of personnel. (d) The provision of governmental services. 2. A determination of whether and how to spend existing resources, including those allocated for equipment, facilities and personnel. 3. The licensing and regulation of any profession or occupation.
AZ	4. The establishment, implementation and enforcement of minimum safety standards for light rail transit systems. 12-820.02. Qualified immunity A. Unless a public employee acting within the scope of the public employee's employment intended to cause injury or was grossly negligent, neither a public entity nor a public employee is liable for: 1. The failure to make an arrest or the failure to retain an arrested person in custody. 2. An injury caused by an escaping or escaped prisoner or a youth committed to the department of juvenile corrections. 3. An injury resulting from the probation, community supervision or discharge of a prisoner or a youth committed to the department of juvenile corrections, from the terms and conditions of the prisoner's or youth's probation or community supervision or from the revocation of the prisoner's or youth's probation, community supervision or conditional release under the psychiatric security review board. 4. An injury caused by a prisoner to any other prisoner or an injury caused by a youth committed to the department of juvenile corrections to any other committed youth.
AZ	5. The issuance of or failure to revoke or suspend any permit, license, certificate, approval, order or similar authorization for which absolute immunity is not provided pursuant to section 12-820.01. 6. The failure to discover violations of any provision of law when inspections are done of property other than property owned by the public entity in question. 7. An injury to the driver of a motor vehicle that is attributable to the violation by the driver of section 28-693, 28-1381 or 28-1382. 8. The failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under any federal law or any law of this state.

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

AR	
CA	Scope of Immunities: Public Entities liable only as provided by statute (Govt. Code § 815(a)), e.g.: • for injury approximately caused by ct/omission of employee of public entity within scope of employment (§ 815.2.(a)) • for tortious act/omission of independent contractor of public entity as if public entity was private person (§ 815.4) No liability if immunity provided by statute, e.g. for: • adopting/failure to adopt enactment or failure to enforce any law; • issuance, denial, revocation etc. of permit license etc. if discretion (§ 818.4); • failure to make certain (adequate) inspections (§ 818.6); • certain publications of reports, records etc (§ 818.7); • misrepresentation by employee of public entity (§ 818.8); • plan/design of construction of public property under certain conditions (§ 830.6); • failure to provide traffic signals etc. with certain exceptions (§ 830.8). Liable for Punitive Damages: No.
CA	(No liability for exemplary and punitive damages -Govt. Code § 818) Statutory Caps for Damages: General statutory caps, if any, apply. Statute of Limitations: Claims notice Death/Personal Injury/Personal Property to be filed within 6 months after accrual of claim (Govt. Code § 911.2) Action to be filed within 6 month after response to claim or, if no response to claim, within 2 years after accrual of cause of action (Govt. code § 945.6)
CO	Exceptions to immunity - The operation of a motor vehicle owned or leased by a public entity or employee while in the course of employment. However, this waiver does not apply to emergency vehicles. The operation of any public hospital, correctional facility, or jail. A dangerous condition of any public building. A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion. Physically interferes with the movement of traffic” does not include traffic signs, signals, or markings or the lack thereof. A dangerous condition caused by the failure to realign a stop sign or yield sign which was turned without authorization in a manner which reassigned the right of way or the failure to repair a traffic control signal on which conflicting directions are displayed. 7
CO	A dangerous condition caused by an accumulation of snow and ice which physically interferes with public access on walks leading to a public building open for public business if the public entity failed to use existing means available to it to remove or mitigate such accumulation if the public entity had actual notice of the condition and a reasonable time to act. A dangerous condition of any public hospital, jail, public facility located in any park or recreation area maintained by a public entity or a public water, gas, sanitation, electrical, power, or swimming facility. The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility. The waiver of sovereign immunity created by these exceptions does not apply to those incarcerated in a correctional facility or jail unless the claimants have not yet been convicted. - Every few years Plaintiff lawyers lobby to change.
CT	
DE	

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

FL	Attorney fees limited to 25% of award. No punitive damages or interest for the period before judgment. If employee acted outside the scope of employment or in bad faith with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property, then they would be liable. By an act of the State Legislature, a wronged or injured party can have a claims bill introduced in the Fl. Legislature awarding damages above the \$100,000 per person, \$200,000 per occurrence limit. No immunity if suit is filed in federal court. Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability upon entering into a contractual relationship with another agency or subdivision of the state. Such a contract must not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence or to assume any liability for the other party's negligence.
GA	Joint and Several recently eliminated. - Governmental immunity may not extend to employees of local government
ID	
IL	No immunity for willful and wanton conduct; Immunity will not apply if the entity had actual or constructive notice of a dangerous condition in sufficient time to take reasonable steps to remedy condition. Legislation proposed in 2007 to modify joint and several liability to provide that the apportionment of fault under joint liability would only apply to parties remaining in the litigation at the time of the final judgment of the trier of fact; would not apply to defendants or 3rd party defendants that have been dismissed for any reason, including settlement. Are not aware at this time if legislation will be reintroduced in 2008.
IN	Exceptions to governmental immunity: false arrest, false imprisonment; intentional misrepresentation; loss resulting from design of highways and tollways (within 20 years of design); certain acts not performed in good faith. See Ind. Code 34-13-3-3. Additional comments: Recent case against Indiana public school corporation which involved the definition of "any one" occurrence. A student alleged that an employee of the school corporation molested her. At the time, Indiana law provided for a maximum of \$300,000 for injury to or death of any one person in any one occurrence. The student alleged that she was assaulted by the employee one hundred different times thus suffering one hundred different injuries from a hundred different occurrences. The student asserted her cap for injuries was \$30 million [\$300,000 times 100 different occurrences]. No previous case has ever established multi-occurrences in such a fact-situation. This case settled without a court opinion on this issue.
IA	
KS	Discretionary functions, long list of others, but most have been eroded significantly over the years. - Comparative negligence, joint & several liability - A bill has been proposed to require cities to submit to binding arbitration when individuals make a claim against the city.

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

KY	(state agencies & school districts enjoy sovereign immunity) - Immunity does not apply to "proprietary functions" or to individual govt. employees who usually enjoy qualified good faith immunity. - There is no tort cap for private defendants. State agencies are covered via the Board of Claims (KRS 44.070)
LA	59:2-2. Liability of public entity - a. A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances. A public entity is not liable for the exercise of discretion when, in the face of competing demands, it determines whether and how to utilize or apply existing resources, including those allocated for equipment, facilities and personnel unless a court concludes that the determination of the public entity was palpably unreasonable. Nothing in this section shall exonerate a public entity for negligence arising out of acts or omissions of its employees in carrying out their ministerial functions. 59:2-6. Failure to inspect, or negligent inspection of, property.
LA	A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property; provided, however, that nothing in this section shall exonerate a public entity from liability for negligence during the course of, but outside the scope of, any inspection conducted by it, nor shall this section exonerate a public entity from liability for failure to protect against a dangerous condition as provided in chapter 4. A public entity is not liable for failure to provide supervision of public recreational facilities; provided, however, that nothing in this section shall exonerate a public entity from liability for failure to protect against a dangerous condition as provided in chapter 4. 59:3-1. Liability generally
LA	59:3-1. Generally. a. Except as otherwise provided by this act, a public employee is liable for injury caused by his act or omission to the same extent as a private person. A public employee is not liable for the exercise of discretion when, in the face of competing demands, he determines whether and how to utilize or apply existing resources, including those allocated for equipment, facilities and personnel unless a court concludes that the determination of the public employee was palpably unreasonable. Nothing in this section shall exonerate a public employee for negligence arising out of his acts or omissions in carrying out his ministerial functions. L.1972, c. 45, s. 59:3-2. 59:3-3. Execution or enforcement of laws - A public employee is not liable if he acts in good faith in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.
ME	
MD	I believe we are one of the few states left that still uses the Contributory Negligence standard. A bill to expand the reporting period for the time allowed to file suit from 180 days to one year was not adopted in 2008 but is expected to be reintroduced in 2009.
MA	

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

MI	Exceptions to immunity - Auto operations, building defect, proprietary function, defective highway, gross negligence, government hospitals & medical care.
MN	The statutes make political subdivisions liable for their negligence, but provide for a number of specific immunities as exceptions to that rule. Among the more important immunities are discretionary acts; snow and ice accumulation; parks and recreations; and unimproved property. See generally M.S 466.03. - Modified joint and several. - Under current law, the tort caps will increase to \$500,000 / \$1,500,000 effective 7/1/2009. A bill has also been introduced to provide compensation for victims of the I-35 bridge collapse irrespective of the \$1 M per occurrence tort cap that applied at the time of the collapse.
MS	
MO	Immunity Exceptions - (1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment; (2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
MO	In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent defective or dangerous design of a highway or road, which was designed and constructed prior to September 12, 1977, the public entity shall be entitled to a defense which shall be a complete bar to recovery whenever the public entity can prove by a preponderance of the evidence that the alleged negligent, defective, or dangerous design reasonably complied with highway and road design standards generally accepted at the time the road or highway was designed and constructed.
MO	Additional Comments – The limitation on awards for liability provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce.
MT	There is not legislation to change the current law. However, tort caps in place since 1988 and are currently facing several challenges. - As I noted we enjoy few immunities! Here is what we have: Immunity from legislative acts or omissions, Immunity from judicial acts or omissions Recreation immunity - very narrow, designed for landowners immunity form permissive users and transcends to governmental entities Immunity from actions involving a political subdivision's request for assistance with and incident or emergency by emergency services Immunity from punitive damages Government jurisdictions have no sovereign immunity and only enjoy immunity expressly provided by a 2/3 vote of the legislative assembly.

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

NE	Exceptions to immunity - Discretionary functions; inadequate/negligent inspections; license/permit issuance or denial; tax collection; assault/battery, libel, slander etc.; downed or malfunctioning traffic signal without notice; temporary snow/ice and related conditions on highways; spot defects on highway; certain recreational activities on public land for which no fee is charged. - Comparative negligence, except in connection with law enforcement pursuits involving injuries to innocent third parties for which there is a strict liability standard. - Yes, LB 78 would increase the tort cap per claimant from \$1 million to \$3million; and the tort cap per occurrence from the current \$5 million to \$12 million--this legislation currently remains in committee.
NV	No except for punitive damages. -Immune for failure to inspect or discover a hazard. - comparative; joint and several - Changed in the 2007 Legislative Session. - Tort cap increases to \$100,000 effective 10/1/2011
NH	Governmental Immunity; NH no longer has municipal immunity. We have other immunities that run to governmental entities; snow ice and weather hazards, recreational statutes, and maintenance of roadways. Governmental entities also receive discretionary function immunity, and qualified immunity for law enforcement.
NJ	
NM	Motor vehicles, aircraft and watercraft; buildings, public parks, machinery, equipment and furnishings; airports; public utilities; medical facilities; healthcare providers; highways and streets; law enforcement officers. - During last year's legislative session, the tort claims act was amended to increase the cap for property damage from \$100,000 per occurrence to \$200,000 per property address (this section of act had not been changed since 1976)
NY	
NC	Exceptions to immunity - Proprietary functions, purchase of liability insurance. - No changes currently proposed, the trial lawyers have an interest in trading current immunity statute for a tort cap since some jurisdictions take high liability insurance retentions and deny all liability claims valued below the retention. - No tort caps to the exceptions to immunity. The liability for governmental functions is waived up to the limit of the liability policy; i.e. if the claim exceeds the limit of the policy, then the entity is immune, no so for a proprietary function.
ND	Limited governmental immunity exists for legislative and judicial acts; certain discretionary functions; and the public duty rule has been adopted by statute. Immunity applies in most instances to public land used for recreational purposes if no user charge is made.

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

OH	<p>Exceptions to immunity - Proprietary functions, vehicle liability; streets; buildings & grounds. - Modified comparative negligence, with limitations on joint & several. - 2 year statute of limitations; no punitive damage awards; insurance offsets; recreational immunity; immunity can be reasserted based upon defenses provided in statute. No punitive damage awards against political subdivisions. Modified comparative negligence = if the plaintiff's negligence exceeds negligence of all defendants, plaintiff can't recover. Limitation on joint & several liability = if more than 50% responsible, then responsible for the entire amount.</p>
OK	<p>Tort Cap Per Occurrence: Property loss - \$25,000; Other loss for Cities and Counties w/ less than 300,000 population - \$125,000; w/ more than 300,000 population - \$175,000; Wrongful criminal felony conviction resulting in imprisonment - \$175,000. Exceptions to immunity: 1. Legislative functions; 2. Judicial, quasi-judicial, or prosecutorial functions, other than claims for wrongful criminal felony conviction resulting in imprisonment provided for in Section 154 of this title; 3. Execution or enforcement of the lawful orders of any court; 4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy; 5. Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees; 6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection; 7. Any claim based on the theory of attractive nuisance;</p>
OK	<p>8. Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the state or a political subdivision; 9. Entry upon any property where that entry is expressly or implied authorized by law; 10. Natural conditions of property of the state or political subdivision; 11. Assessment or collection of taxes or special assessments, license or registration fees, or other fees or charges imposed by law; 12. Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority; 13. Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of any property, real or personal, to determine whether the property complies with or violates any law or contains a hazard to health or safety, or fails to conform to a recognized standard;</p>

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

OK	<p>14. Any loss to any person covered by any workers' compensation act or any employer's liability act; 15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions; 16. Any claim which is limited or barred by any other law;</p>
OK	<p>17. Misrepresentation, if unintentional; 18. An act or omission of an independent contractor or consultant or his employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred; 19. Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or wrongful act or omission of the employee; 20. Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision; 21. Participation in any activity approved by a local board of education and held within a building or on the grounds of the school district served by that local board of education before or after normal school hours or on weekends; 22. Any court-ordered or Department of Corrections approved work release program; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;</p>
OK	<p>23. The activities of the National Guard, the militia or other military organization administered by the Military Department of the state when on duty pursuant to the lawful orders of competent authority: a. in an effort to quell a riot, b. in response to a natural disaster or military attack, or c. if participating in a military mentor program ordered by the court; 24. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or injuries by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections; 25. Provision, equipping, operation or maintenance of any juvenile detention facility, or injuries resulting from the escape of a juvenile detainee, or injuries by a juvenile detainee to any other juvenile detainee; 26. Any claim or action based on the theory of manufacturer's products liability or breach of warranty, either expressed or implied;</p>

2008 STATE TORT CAP AND GOVERNMENTAL IMMUNITY SURVEY - AGRiP

OK	27. Any claim or action based on the theory of indemnification or subrogation; 28. Any claim based upon an act or omission of an employee in the placement of children; 29. Acts or omissions done in conformance with then current recognized standards; 30. Maintenance of the state highway system or any portion thereof unless the claimant presents evidence which establishes either that the state failed to warn of the unsafe condition or that the loss would not have occurred but for a negligent affirmative act of the state; 31. Any confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State made in good faith by an employee of the office of the Secretary of State as required by the provisions of Section 1-9-320.6 of Title 12A of the Oklahoma Statutes; 32. Any court-ordered community sentence; or 33. Remedial action and any subsequent related maintenance of property pursuant to and in compliance with an authorized environmental remediation program, order, or requirement of a federal or state environmental agency. Liability standard: several.
OR	Public entity immunities include "discretionary function or duty" but that has been narrowly construed in case law. Tort claims act also has substitution provision whereby entity can be substituted for sued employees. Subject public entities are required to defend and indemnify employees and agents. Significant recent development: Clarke v OHSU, 343 Or 581, 175 P3d 418, Or (Dec. 28, 2007) held the "substitution provision" unconstitutional as applied in this case because it deprived plaintiff of a substantial remedy as guaranteed by state const. (Stipulated damages of \$17 million in med mal case vs. state university hospital and staff. Capped damages under tort claims act of \$200,000 was max. available under statute) Practical effect of this case is to potentially eliminate tort cap in most tort claims. State legislature is studying legislative response to try to ameliorate impact on public entities or at least bring more certainty to public sector tort liability. For more info. on this case, contact mrauch@cciservices.com
PA	Pennsylvania's "Tort Claims Act", 42 PaCS Sec. 8541, provides the defense of governmental immunity against any damages resulting from injury to a person or property caused by any act of a local agency OR its' employee. An injured party may recover in tort from a local agency if: (A) the damages would be otherwise recoverable under common law or statute creating a cause of action if the injury were caused by a person not having a available defense under section 8541 (relating to governmental immunity generally) or section 8546 (relating to defense of official immunity); and (B) the injury was caused by the negligent act of the local agency or an employee acting within the scope of his official duties and (C) the negligent act of the local agency falls within one or more of the eight enumerated categories of exception to immunity, PaCS Sec. 8542(b): (1) Vehicle Liability; (2) Care, custody or control of personal property; (3) Real Property; (4) Trees, traffic controls and Street Lighting; (5) Utility service facilities; (6) Streets; (7) Sidewalks; and/or (8) Care, Custody or control of animals.
PA	42 PaCSA section 8541 et seq pertains to political subdivisions only; counties, cities, boroughs, townships, etc. Another statute pertains to the state.
RI	Rhode Island's Tort Cap applies ONLY to the entity and not to officials sued in their official and/or personal capacities. Moreover, the cap does not apply to negligence in the execution of a proprietary function. There is limited immunity afforded to governmental entities under the Public Duty doctrine, but there are many exceptions to that immunity. In addition, there are certain statutory immunities that apply to fire and rescue personnel, coaches, police, public school teachers, and members of public bodies. Finally, there is a Recreational Use Statute that provides liability protection to the State and its municipalities, but that statute is currently under attack in the Legislature.
SC	

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SD	
TN	(a) Emergency communications district boards and the members of such board shall be immune from any claim, complaint or suit of any nature which relates to or arises from the conduct of the affairs of the board except in cases of gross negligence by such board or its members. Such immunity shall not, however, be construed to extend to any employee of the emergency communications district. (b) Local Education agency employees, including board members, superintendents, teachers and non-professional staff members, shall be absolutely immune from liability for acts and omissions within the scope of the employee's office arising from the detection, management or removal of asbestos from buildings and other structures owned or controlled by the local education agency when the local education agency has complied with the United States environmental protection agency regulations relative to asbestos in schools; provided, that such immunity shall not apply if the acts of omissions of the employee were grossly negligent, willful, malicious, criminal or were done for personal gain.
TX	Immunity is waived for Texas cities in the same way as that described under "county" above. The major difference is that liability for cities is capped at 250,000 per person and 500,000 per occurrence BI and 100,000 PD for damages arising from governmental functions. The Tort Claims Act contains a list of 34 items that are deemed to be governmental functions. There is no cap on the liability of municipalities for proprietary functions including the operation and maintenance of a public utility, amusements, and any activity that is abnormally dangerous or ultra-hazardous.
TX Co.	Immunity waived by Tort Claims Act for damage caused by 1) negligence in operation of motor vehicles and motor driven equipment; or 2) condition or use of tangible real or personal property. There are also other statutory waivers, the most common of which are the Texas Whistleblower Act and employment discrimination statutes similar to Title VII. All have caps based on number of employees and all allow recovery of attorneys fees. The liability standard in Texas is proportionate responsibility, generally, but Plaintiff recovers nothing if >50% negligent and Defendant can be jointly and severally liable if its negligence is >50%, or in toxic torts. No proposed legislation as the legislature is not in session, but we typically see several bills that would waive immunity or broaden the waiver of immunity.
UT	
VT	One way around governmental immunity is to sue an individual employee. Only the governmental entity has the immunity. Also immunity also only applies to state suits, not federal.
VA	Counties immune from tort, Cities and town have immunity for governmental functions, not proprietary functions. Entity immunity different than employee immunity discretionary test, <u>Messian</u> is controlling case. There are no local government tort caps. The tort cap in Virginia applies to the state only - see Va Code 8.01-195.1 (100,000 limit of liability) Sovereign immunity is alive and well, but it differs for counties vs municipal corporations (cities and towns) Counties still have immunity for all activities, unless the county or its agent is grossly negligent in performing the activity, commits an intentional tort, or commits a federal civil rights violation. Municipal corporations' (cities and towns) immunity is less broad.

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VA	<p>If the function is determined to be governmental in nature then immunity applies, however, if the activity is proprietary, then immunity does not apply. Examples of governmental functions in Virginia are, the design of a water or waste water plant or system the design of streets public safety garbage, landfill ambulance jails planning emergency, including snow and ice removal Examples of proprietary functions where there is no immunity are; Operation of sewer and water systems Operation of a farmers market Rental of municipal property Airport Immunity for schools School boards generally enjoy immunity from tort claims, although by statute VA Code 22.1-194 they can be sued for school bus accidents. Drivers enjoy immunity for the accident unless they are held to be grossly negligent or commit an intentional act.</p>
VA	<p>Individual Immunity/Official Immunity Messina v Burden 228 Va 301, 321 S.E. 2nd 657 (1984) stands for the idea the sovereign immunity for the public official is alive and well Messina reasoned that immunity is necessary to 1.protect the public purse 2.without it, public officials would be reluctant to serve 3.carryout the functions of government in an orderly fashion 4.prevent persons from improperly influencing the conduct of governmental affairs Persons eligible for immunity 1.persons at the highest level of government (governors, judges state and local legislative bodies and members)2.city and county officials must fit a four factor test as set out in Messina to qualify for immunity a.the function must be vitally important to the public b.the employing government entity must have official interest and direct involvement in the function c.the degree of control and direction exercised over the employee (how much discretion does the employee have)</p>
VA	<p>Drivers enjoy immunity for the accident unless they are held to be grossly negligent or commit an intentional act. Individual Immunity/Official Immunity Messina v Burden 228 Va 301, 321 S.E. 2nd 657 (1984) stands for the idea the sovereign immunity for the public official is alive and well Messina reasoned that immunity is necessary to 1.protect the public purse 2.without it, public officials would be reluctant to serve 3.carryout the functions of government in an orderly fashion 4.prevent persons from improperly influencing the conduct of governmental affairs Persons eligible for immunity 1.persons at the highest level of government (governors, judges state and local legislative bodies and members)2.city and county officials must fit a four factor test as set out in Messina to qualify for immunity a.the function must be vitally important to the public b.the employing government entity must have official interest and direct involvement in the function c.the degree of control and direction exercised over the employee (how much discretion does the employee have)</p>
VA	<p>d.it must be determined whether the alleged wrongful act involves an exercise of judgment and discretion –must not be a ministerial act - A ministerial act “is one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority without regard to or the exercise of his own judgment” Dovel v Bertram 184 Va 19 (1945) Virginia also recognizes the Public Duty Doctrine for public safety issues. That is, law enforcement or fire departments owe a general duty to the public at large but not to an individual unless an authorized person from within a department specifically promises to act. If the department then fails to follow up on the promise, then the public duty doctrine of immunity will not apply. http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-1809</p>
WA	
WV	
WI	<p>In general, there is immunity for legislative, quasi-legislative, judicial and quasi-judicial decisions. This is usually summarized as immunity for discretionary acts and no immunity for ministerial, non-discretionary or intentional acts. Defenses based on the damage caps are affirmative defenses, or they are deemed to be waived.</p>
WY	<p>Exceptions to immunity - operation of motor vehicles, aircraft and watercraft; buildings, recreation areas and public parks; airports; public utilities; medical facilities; health care providers; peace officers.</p>