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## FISCAL IMPACT REPORT

SPONSOR: Adair DATE TYPED: 03/05/01 HB \_\_\_\_\_  
 SHORT TITLE: Monetary Damages Against State SB SJR 32  
 ANALYST: Burch

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		**	**	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*\* Please see Fiscal Implications Section of this report.

### SOURCES OF INFORMATION

LFC files  
 Secretary of State

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 32 proposes to add a new section to Article 9 of the Constitution of New Mexico that provides that a judgement for money damages against the state or one of its political subdivisions may not be executed unless:

- procedures for executing such a judgement are established by law; or
- the Legislature has appropriated the amount to satisfy the judgement.

The joint resolution also proposes to repeal Section 7 of Article 8 of the constitution, Judgments Against Local Officials, which precludes the execution of judgement against specified political subdivisions and their officers and provides for the payment of such judgements out of the proceeds of a tax levy in the same manner as other liabilities of political subdivisions.

“No execution shall issue upon judgment rendered against the board of county commissioners of any county, or against any incorporated city, town or village, school district or board of education; or against any officer of any county, incorporated city, town or village, school district or board of education, upon any judgment recovered against him in his official capacity and for which the county, incorporated city, town or village, school district or board of education, is liable, but the same shall be paid

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out of the proceeds of a tax levy as other liabilities of counties, incorporated cities, towns or villages, school districts or boards of education, and when so collected shall be paid by the county treasurer to the judgment creditor. (As amended November 3, 1914.)”

### Significant Issues

According to the Attorney General analysis, “The provision does not clearly cover judgments for money damages recovered against state and local officers in their official capacities. The requirement for an appropriation is confusing because the legislature generally does not appropriate money to local governments for payment of their obligations. To avoid a possible charge of unconstitutional logrolling, the title of the amendment might be phrased more broadly so that it encompasses the repeal of Art. VIII, § 7.”

### **FISCAL IMPLICATIONS**

If passed, this question would appear on the ballot in the November 2002 general election. The Secretary of State reports it costs \$30.0 to place an item on the ballot. Included in the cost is: (1) the publishing of constitutional amendments in English and Spanish for four consecutive weeks in one newspaper in each county of the state; (2) the oral translation and radio broadcast into the Native American languages of Tewa, Tiwa, Towa, Keres, Zuni, Mescalero Apache, Jicarilla Apache and Navajo; and (3) the printing of amendments booklets in English and Spanish (including Spanish language translation cost) and distribution to all county clerks (100,000 booklets were printed for 2000 general election). Therefore, there would be a nonrecurring cost to the general fund of \$30.0 in FY03. This legislation does not include the appropriation necessary to fund these costs

### **RELATIONSHIP**

The Attorney General reports: “The proposed amendment relates to the Tort Claims Act, NMSA 1978, §§ 41-4-1 to -27, which waives the sovereign immunity of the state and its political subdivisions for certain claims and creates public liability funds from which to pay claims and judgments against the state and local governments and government officials.”

### **OTHER SUBSTANTIVE ISSUES**

The Attorney General analysis brings up the following issues:

- By its terms, the proposed amendment applies only to the state and its political subdivisions. It does not cover officials of the state or political subdivisions when acting in their official capacities. Thus, the proscriptions of the proposed amendment might be avoidable if a person brings a lawsuit against state or local government officials rather than directly against the state or a local government itself.
- The requirement for an appropriation is confusing because the legislature generally does not appropriate money to political subdivisions to cover their liabilities, including judgments for money damages. In addition, the constitution already precludes the state from spending money unless the legislature has appropriated money for the expenditure. See N.M. Const. art. IV, § 30.
- The title of the proposed amendment now refers only to the requirements for executing judgments for money damages against the state or its political subdivisions. The title should be more broadly written so that it also encompasses the repeal of Art. VIII, § 7. Otherwise,

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the proposal may be vulnerable to challenge under Article XIX, Section 1 on the grounds of “logrolling,” i.e., that the proposal is actually two amendments that should be submitted to voters separately, or that the proposal’s description does not fairly apprise the voters of the nature and scope of the proposed amendment. See State ex rel. Clark v. State Canvassing Bd., 119 N.M. 12 (1995).

DKB/njw