

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC's office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT



SPONSOR: Ingle DATE TYPED: 2/02/02 HB _____

SHORT TITLE: "Scope of Duties" Defined SB 174

ANALYST: J. Sandoval

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC files

Responses Received

Attorney General (AG)

Labor Department

SUMMARY

Senate Bill 174 amends the Tort Claims Act by making minor grammatical corrections and by redefining the term "scope of duties" of public employees. This bill clearly disallows acts that arise entirely from some external, independent and personal motive or are criminal as being within the "scope of duties" of a public employee.

Significant Issues

Currently a public employee's scope of duties is defined as "any duties that a public employee is requested, required or authorized to be performed by the governmental entity, regardless of the time and place of performance." A recent court decision has demonstrated that the current definition of scope of duties may encompass criminal actions. Clarification of this definition may limit the extent of the State's liability for acts of a public employee.

OTHER SUBSTANTIVE ISSUES

According to the Office of the Attorney General, "this bill is in response to Risk Management Division vs. McBrayer, 129 N.M. 778, 2000-NMCA-104. In this case a student at NMSU was raped by

her instructor. While the instructor was convicted of rape and other crimes, in the civil suit the Court of Appeals held that it was still possible for a jury to find that the instructor was acting within the scope of his duties under the Tort Claims Act. This would require the state to provide a legal defense to the instructor and be liable for the damage caused by his acts. While the state could seek to recover against the instructor, he is in prison and is likely to be judgment proof. The proposed amendment would exclude from the definition of scope of duties acts which are criminal and which are totally unrelated to the public employee's duties. If the acts of a public employee are not within the scope of duties, the state has no obligation under the Tort Claims Act with respect to such acts".

According to the Department of Labor, "The New Mexico Tort Claims Act establishes the sovereign immunity of the state and state employees for tort claims brought against it... If the legislation limits the extent of the immunity, employees who commit more egregious infractions will not be protected under the state's sovereign immunity and the state will not have to pay to defend and indemnify the employee in litigation."

POSSIBLE QUESTIONS

1. What is the meaning of "judgment proof", as used by the Attorney General in it's description of the defendant in this FIR?
2. How can the State be held liable for acts that are obviously not requested, required or authorized by the state and are simply criminal?
3. Does the State have an obligation to insure that "public employees" are performing within their scope of duties while operating as a representative of the State of New Mexico?

JFS/njw:ar