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 for other purposes.

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 in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR:	Komadina		DATE TYPED:	1/27/03	HB	
SHORT TITL	E:	Skate Parks Liability			SB	87
				ANALYST:		Geisler

APPROPRIATION

Appropriatio	on Contained	Estimated Add	litional Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		See Na	arrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Attorney General (AG) EMNRD State Parks Division (EMNRD) General Services Risk Management Division (RMD)

SUMMARY

Synopsis of Bill

Senate Bill 87 would amend the current law in Section 41-4-6 NMSA 1978, to exclude skate parks from liability under the state's Tort Claims Act. Governmental entities and public employees would be granted immunity from liability for any tort arising from a person's participation in skateboarding or inline skating in a skate park. The bill would define "Skate Park" as a designated area posted as a Skate Park.

Significant Issues

According to the AG, the bill's language may not track with existing provisions of the Tort Claims Act and thus may create confusion.

FISCAL IMPLICATIONS

This bill limits the liability associated with skateboarding and inline skating. There is a positive fiscal impact in that public agencies will be exempt from potential liability and the associated costs of that liability.

ADMINISTRATIVE IMPLICATIONS

The bill defines the meaning of a "skate park" located on public property. This facility would require posting a sign in the designated area stating that it is a "skate park." The agency would have to install this signage in any areas if this activity were allowed to occur in state or municipal parks in order to limit liability.

TECHNICAL ISSUES

According to the AG:

- 1. Page 1, line 20 strikes out Section 5-14-4 and replaces it with 41-4-4. This correction already exists in current statute.
- 2. Page 1, line 25 lists "except for a skate park" in the middle of a series of items. The existing provisions of the Tort Claims Act use a two sentence approach. The first sentence lists the locations where immunity is waived. The second sentence lists the exceptions to the first sentence.
- 3. Page 2, lines 4-7 repeats the substance of Page 1, line 25, but also is inconsistent with the above-mentioned two sentence approach.
- 4. Page 2, line 8 deals with authority and permission issues. This type of sentence appears to be unique to the entire Tort Claims Act.
- 5. Page 2, lines 7-15 deal with the posting of signs. <u>Blackburn v. State</u>, 98 NM 34 (Ct. App. 1982) appears to state that signs are considered a subset of "maintenance" and whether appropriate signs have been posted is a question of fact for a jury.

OTHER SUBSTANTIVE ISSUES

Per the AG, page 2, line 7-15 appears to create governmental immunity at a skate park. By inference, it seems to admit to governmental liability for all other skate board injuries on government owned and controlled property. On page 2, line 3 could read: "maintenance of a skate park or works used for diversion or storage of water..."

Per RMD, bill offers defense by immunity—cash law may untimately deteriorate strength and intent of bill.

GG/yr