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FISCAL IMPACT REPORT

SPONSOR Robinson DATE TYPED 3/1/05 HB _____

SHORT TITLE Tort Claims Permissible Damage Awards SB 912

ANALYST Wilson

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|-------------------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | | | Significant \$0.1 | | |

Relates to SB 860

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 Corrections Department (CD)
 Department of Transportation (DOT)
 Energy, Minerals & Natural Resources (EMNRD)

SUMMARY

Synopsis of Bill

Senate Bill 912 SB amends section 41-4-12 NMSA 1978 to waive sovereign immunity for claims against public entities and all of their employees, not just law enforcement officers, for liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation, privileges or immunities secured by the United States or New Mexico's constitutions and laws when those employees are acting within the scope of their duties.

This bill also allows plaintiffs to be awarded attorney fees, expenses, costs, exemplary and punitive damages and interest prior to judgment for claims brought under the United States or New Mexico constitutions.

Significant Issues

By expanding the waiver of sovereign immunity for tort claims to include all public employees and not just law enforcement officers, this bill will increase the number of claims that can be filed against public entities and the agencies that employ them. This will increase the number of claims that the Risk Management Division (RMD) of the General Services Department (GSD) will have to defend against as well as the number of claims that other local government entities not insured by RMD will have to defend. This will increase not only the cost of defending against tort claims brought against public entities and their employees, but potentially the number and amount of claims paid as well. Agencies will have to increase their premium payments to the RMD.

While non-law enforcement officers will not be arresting individuals within the scope of their employment, this still leaves numerous other tort claims that will be brought against those employees. For example, the EMNRD is responsible for regulating oil and gas development, mining activities, and commercial timber harvesting. All of these involve the issuance of permits. Individuals could claim that denial of a permit or enforcement of regulations deprived them of a property right or other right under the New Mexico or United States constitution or laws.

The AODA states this bill will increase the number and impact of law suits brought against the state due to actions of public employees. It will further chill the district attorneys' offices ability to hire and retain prosecutors, given that their actions within their duties might be challenged under the extremely broad umbrella of prohibited activities named in this case. It will exponentially increase the case load and budget of the RMD as well as that of public agencies including district attorneys, as public employees must be defended and put on leave while issues are resolved in the civil action.

CD claims this bill could result in a high increase in insurance premiums and potential civil damages awards to them because it will permit aggrieved parties to recover under tort claims that are now precluded by the Tort Claims Act's grant of immunity employees. Moreover, it creates a high exposure to liability because the CD could be required to pay large punitive damages awards to injured party. The bill could also result in a high increase for other state agencies for the same reasons

FISCAL IMPLICATIONS

This bill will subvert traditional prosecutorial immunity and leave open the potential for enormous financial impact on the State, as it covers acts committed by public employees while acting within the scope of their duties.

This bill will allow for recovery of unlimited awards, in certain cases, against the State of New Mexico, thereby impacting insurance rates and the general fund.

EMNRD states the number of claims against public entities will increase because of the expanded waiver of sovereign immunity, the state and other public entities will spend more money on defending against and resolving claims. This is likely to be a substantial increase.

The DOT believes the fiscal implications to the State could be significant if this bill becomes law. As mentioned above, punitive damages and prejudgment interest cannot be awarded against the State under existing law. If this bill is passed, prevailing plaintiffs in cases brought under the

New Mexico Tort Claims Act and under the United States and New Mexico constitutions could be awarded punitive damages, prejudgment interest, attorney fees and costs and the State will be liable for paying these additional expenses as if it were a private person.

The AGO states that the provisions of this bill will expose a governmental entity to endure enormous increases in insurance premiums and lawsuits.

ADMINISTRATIVE IMPLICATIONS

Under the existing Tort Claims Act, immunity does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment and other enumerated acts caused by law enforcement officers acting within the scope of their duties. If this bill becomes law, immunity will be waived for the same acts committed by all public employees acting within the scope of their duties.

The amendment will increase the number of claims that RMD will have to manage, therefore increasing its workload. When the number of claims from all state agencies increases because the amendment waives immunity for all public employees and not just law enforcement employees, agencies will spend increased time providing required documents and information relating to such claims to RMD.

RELATIONSHIP

This bill is related to SB 860 which provides that all punitive damages awards be paid to the state's general fund rather than the injured party. Because this bill amends the Tort Claims Act to permit the award of punitive damages against the state, the CD points out the state will be paying itself if such an award is granted.

OTHER SUBSTANTIVE ISSUES

The AGO has provided a history of the public policy of limited state immunity as outlined in common law and statute as follows:

The statute defines sovereign immunity as the legislature recognizing that while a private party may readily be held liable for his torts within the chosen ambit of his activity, the area within which the government has the power to act for public good is almost without limit, and therefore the government should not have the duty to do everything that might be done.

Following the abolition of sovereign immunity the New Mexico Legislature responded by enacting the Tort Claims Act (TCA), which reinstated governmental immunity except in eight specific classes of activities.. In addition to declaring the States' public policy that governmental entities and public employees are only liable within the limitations of the act, the New Mexico legislature announced that governmental entities and public employees acting in the scope of their duties shall be immune from liability from any tort except as waived in the act. In construing the TCA, New Mexico courts have ruled that a cause of action does not exist unless immunity for that cause of action has been specifically waived.

The TCA provides governmental entities and public employees acting in their official capacities with immunity from tort suits unless the act sets out a specific waiver of that immunity. Thus, under the TCA the court must first determine whether immunity has been waived for the claims against the governmental entities and public employees acting within the scope of their employment. Consent to be sued under the TCA must be specifically found in one of the exceptions under the act.

If law enforcement officers are replaced with public employees then any public employee working for any governmental employee could be exposed to suit for anything, and the above-cited case law will no longer be relevant, thus the concept of State immunity will be entirely done away with.

DW/lg