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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/07
 SPONSOR HAFC LAST UPDATED 3/14/07 HB CS/14/aSJC
 SHORT TITLE Certain Tort Claims Maximum Liability Amount SB _____
 ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			\$250.0 to \$500.0 est..		Recurring	Public Liability Fund *

(Parenthesis () Indicate Expenditure Decreases)

*Risk Management Division will pay the claims from the public liability fund, but will recoup them from premiums charged to the agencies. The premiums will be paid from various funds including the general fund.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Association of Counties
 Attorney General's Office (AGO)
 Corrections Department (CD)
 General Services Department (GSD)
 State Transportation Department (STD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the House Appropriations and Finance Committee Substitute for House Bill 14 restores to current law the sum of \$400,000 to any person for any number of claims arising out of a single occurrence for all damages other than real property damage and medical and medically related expenses as permitted under the Tort Claims Act. The modifier of real to property damage remains the same as it is in the HAFC substitute.

The total liability for all claims not related to real property amends the substitute bill to restore the \$750,000 current cap for claims other than real property damage.

The only cap that is increased in the substitute bill and not changed in the amendment is the damage to real property from \$100,000 to \$200,000 liability limits for each legally described real property for damage to or destruction of that legally described real property arising out of a single occurrence.

Synopsis of Original Bill

The House Appropriations and Finance Committee Substitute for House Bill 14 increases the limits of governmental liability provided by NMSA Section 41-4-19 of the New Mexico Tort Claims Act from \$100,000 to \$200,000 liability limits for each legally described real property for damage to or destruction of that legally described real property arising out of a single occurrence.

In addition this bill increases the limits of governmental liability to any person for any number of claims arising out of a single occurrence for all damages other than real property damage and medical and medically related expenses (pain and suffering) as permitted under the Tort Claims Act as follows:

- (a) \$425,000 in fiscal year 2009;
- (b) \$450,000 in fiscal year 2010;
- (c) \$475,000 in fiscal year 2011; and
- (d) \$500,000 in fiscal year 2012 and subsequent fiscal years.

The total liability for all claims that arise out of a single occurrence shall not exceed:

- (1) \$800,000 in fiscal year 2009;
- (2) \$850,000 in fiscal year 2010;
- (3) \$900,000 in fiscal year 2011;
- (4) \$950,000 in fiscal year 2012 and subsequent fiscal years.

The provisions of this act apply only to claims for damages resulting from torts committed on or after July 1, 2008.

The effective date of this act is July 1, 2008.

FISCAL IMPLICATIONS

This bill will allow additional monetary recovery against state and other public entities covered by the Tort Claims Act. The Risk Management Division (RMD) will then increase the insurance premiums to the agencies.

According to RMD, there were two property liability claims that were paid at the cap-one in 2004 and the other in 2006.

Under the total liability cap, there were twelve claims paid at the cap-eleven of them were medical malpractice. There was one cap claim paid in 1991, 1994, 1995, 1996 and 1999. There were two paid in 1998 and there were 5 paid in 2003.

There were, therefore, 14 cap cases in 15 years. Using a worse case scenario we can assume they all would have been paid the higher cap. Using an estimate of one case a year x \$50,000, RMD will pay out an additional \$50,000 in FY 2009, \$100,000 in FY2010, \$150,000 in FY 2011 and

\$200,000 in FY 2012 as a result of this bill. RMD will then increase premiums- especially to the offending agencies.

In a year such as 2003 RMD will have to pay out five times the yearly increase.

Raising the caps on none medical and none property claims from \$400,000 to \$500,000 in FY 2012 will also have an unknown negative financial impact on the funds of state and local agencies offering insurance coverage

The Association of Counties acts as the administrator for the New Mexico Counties Insurance Authority self-insurance pools. In that capacity it is responsible for purchasing reinsurance and excess insurance for its members. They claim that this bill will have a negative fiscal impact on local government as well as state agencies because of premium increases.

SIGNIFICANT ISSUES

Our society is becoming more litigious and RMD believes increasing settlement caps may encourage more claims and discourage settlements, which could increase the time to reach settlements and therefore cause higher contract attorney costs.

The Association of Counties notes that New Mexico's tort claim limits are already among the highest in the country, yet we are one of the poorest states.

ADMINISTRATIVE IMPLICATIONS

RMD staff should be able to handle the provisions of this bill as part of RMD's ongoing responsibilities.

OTHER SUBSTANTIVE ISSUES

According to a recently completed audit by the LFC, the RMD reserves are grossly under funded. In addition in the property insurance area RMD has been forced to self fund up to \$500,000 instead of \$100,000 because of changes in the entire insurance industry.

For the full LFC audit please go to: <http://diablo/lcs/lfc/lfcperfaudit.asp>

DW/mt:csd