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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/07

SPONSOR Papen LAST UPDATED _____ HB _____

SHORT TITLE County Valuation Protest Board Liability SB 540

ANALYST C.Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates,
HB 519

SOURCES OF INFORMATION
LFC Files

Responses Received From
General Services Department (GSD)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 540 amends Section 41-4-3 NMSA 1978 to provide “public employee” tort claims immunity for members of county valuation protests boards.

- 1) Section 41-4-4 NMSA provides that a governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by the New Mexico Religious Freedom Restoration Act [28-22-1NMSA 1978] and by Sections 41-4-5 through 41-4-12 NMSA 1978...
- 2) Section F (3) includes within the definition of “public employee,” “persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation.”

FISCAL IMPLICATIONS

There may be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

Under the Tort Claims Act, the Risk Management Division (RMD) of the General Services provides legal defense to covered public employees and officers who are sued in connection with their public service duties, including civil rights and general liability, and pays the costs of defense, attorney fees and any awards for judgment or settlement.

The two appointed, private-citizen members of county valuation protests boards are paid \$80 a day as independent contractors when the board meets, and independent contractors are excluded from the Tort Claims Act in the definition of “public employee” unless specifically exempted. SB 540 adds these board members to the exceptions.

ADMINISTRATIVE IMPLICATIONS

At most, RMD anticipates minimal caseload increase.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB 519.

Relates to SB 49 and SPAC/S SB 23

OTHER SUBSTANTIVE ISSUES

County valuation protests boards hear valuation protests of property tax cases. These boards have three members: an employee of the Taxation and Revenue Department (TRD) and two private citizens appointed by the local board of county commissioners. As a state employee, the TRD member is covered by the Tort Claims Act. The other two members are paid \$80 a day as independent contractors when the board meets.

ALTERNATIVES

Subsection E of Section 7-38-25 NMSA 1978 (the enabling statute for these boards) could be amended to remove the phrase “as independent contractors”.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

County valuation protests board members would not be covered by the Tort Claims Act and would pay their own legal costs if sued for actions taken in connection with their work for the county.

QUESTIONS

Are members of county valuation protest boards included within this group as working in service of a governmental entity?

CS/mt