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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/10
 LAST UPDATED 01/23/10 HB _____

SPONSOR SJC

SHORT TITLE Space Flight Informed Consent Act SB 9/SJCS

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Fiscal Impact		

(Parenthesis () Indicate Expenditure Decreases)

See Fiscal Implications below

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Economic Development Department (EDD)
 New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 9 defines several terms related to space flight and space flight activities, and provides for civil immunity for space flight entities.

A participant in space flight may not maintain an action against or recover from a space flight entity for the loss, damage or death of the participant resulting exclusively from any of the inherent risks of space flight activities.

A space flight entity providing space flight activities to a participant, whether the activities occur on or off the site of a facility capable of launching a suborbital flight, shall have each participant sign a warning statement. The warning statement shall contain, at a minimum, the following statement:

I understand and acknowledge that under New Mexico law, there is no liability for injury to or death sustained by a participant in a space flight activity provided by a space flight entity if the injury or death results from the inherent risks of the space flight activity. Injuries caused by inherent risks of the space flight activities may include, among others,

death, bodily injury, emotional injury or property damage. I assume all risk of participating in this space flight activity.

A space flight entity is not liable for injury to or death of a participant resulting from the inherent risks of space flight activities so long as the as the warning contained in this bill is distributed and signed as required.

There is an exception to the limited liability for gross negligence or willful or wanton disregard for the safety of the participant even if the acknowledgement is signed as required. There are additional exceptions if the space flight entity had actual knowledge of a dangerous condition on the land or in the facilities or equipment. Finally, there is an exception if the space flight entity intentionally injures a participant.

FISCAL IMPLICATIONS

EDD states there is value to the State in supporting this bill which limits the ability of a participant to seek claims against the State for any injury or death resulting from a flight licensed by the Federal Aviation Administration (FAA), the authorized regulatory body. The State's tort claims act already establishes a limitation for the State, but this further defines the participant as accountable after full disclosure and acceptance of the risks. This bill does not relieve the operator of their responsibility in cases of gross negligence.

EDD further states that there will be a loss of revenue of \$12.5 million if Virgin Galactica decides to terminate the lease if this bill fails to pass (there was no documentation for this assertion). EDD further states that other customers may fail to come to New Mexico if this bill fails to pass.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

EDD provided the following:

- 1) The bill establishes a legal framework of informed consent which is consistent with the federal framework.
- 2) Informed consent provides people the right to choose to assume the risk after full disclosure of those risks.
- 3) Virginia and Florida passed immunity bills in 2007 and 2008 which establish a defined business risk framework in those states and are in alignment with the federal law.
- 4) Not having this legislation creates uncertainty with respect to insurance costs and therefore position New Mexico at a competitive disadvantage to Virginia and Florida and other states having this type of legislation.

- 5) This bill does not limit any third party liability. Any damage to people or property is not covered by this bill. In fact, the operator who is licensed by the FAA will be required to carry insurance for third party damage or injury as well as the FAA providing a \$1.5 billion policy to ensure proper coverage for any incident.
- 6) Passing this legislation will maintain New Mexico’s leadership in commercial spaceflight and create economic and educational opportunities for New Mexicans.
- 7) New Mexico’s ability to attract and retain commercial spaceflight operating customers will be significantly impacted should this legislation not be passed.

ADMINISTRATIVE IMPLICATIONS

The agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

OTHER SUBSTANTIVE ISSUES

EDD claims if this bill is not enacted the following will occur:

- New Mexico’s \$198 million investment in Spaceport America will be jeopardized
- New Mexico’s leadership in commercial space will be impacted which limits job creation, tourism and education.
- Virgin Galactica’s operation in New Mexico and the \$250 million projected revenue stream may be at risk if the cost of doing business in New Mexico becomes too great. They may go to other locations.
- Future customers and jobs are at risk.

DW/mew