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F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 03/02/11
SPONSOR Smith **LAST UPDATED** **HB**

SHORT TITLE Space Flight Entity Limited Liability **SB** 435

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		None				

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Spaceport Authority
General Services Department (GSD)
Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 435 amends Section 41-14-2 NMSA 1978 of the Space Flight Informed Consent Act to expand the definition for "space flight activities" to more fully encompass the findings and purposes of the federal Commercial Space Launch Act as defined in 49 U.S.C. Section 70101 , et seq.

The bill also expands the definition of "space flight entity" to include any manufacturer of components for space vehicles; manufacturer of space vehicles, or a supplier of components, services, or vehicles that have been reviewed by the FAA as part of issuing a license, permit or authorization including safety approvals and payload determinations.

FISCAL IMPLICATIONS

The bill expands the reach of the limitation on liability found in the New Mexico Space Flight Informed Consent Act to include manufactures and suppliers of space flight vehicles and services.

Although there is no direct fiscal impact to the state from this bill, there could potentially be savings, or cost avoidance with an expanded limitation on liability.

There could also be an indirect impact if space flight entities, tenants, and users of Spaceport America choose to locate or originate flights in other states that currently provide indemnification to suppliers and manufactures.

SIGNIFICANT ISSUES

According the Spaceport Authority:

> This bill sets New Mexico on equal competitive footing with other states such as Virginia, which explicitly offers indemnification to suppliers and manufacturers, and it builds a level of confidence that the entire supply chain of the new commercial spaceflight industry can grow and develop in New Mexico.
>
> The New Mexico Space Flight Informed Consent Act recognizes the assumption of risk specific to the participant and not liability regarding damage or injury to third parties, i.e. the uninvolved public, property, etc. The law is based on the legal framework established by the Federal Commercial Space Launch Amendments Act of 2004, and is similar to laws in other space states, such as Florida and Virginia. The protections do not apply in cases of gross negligence or failure of a participant to sign the consent/waiver form.
>
> This bill broadens the scope of definitions in the original law to include not only FAA-licensed operators, but also manufacturers and suppliers of components and launch/reentry services to the operators. This reflects the reality of the industry where in many cases the operator is also the manufacturer, whereby providing protections under only one definition still leads to exposure and undermines the intent of the original legislation. Additionally, even in cases where the operator is distinct and separate, situations are likely to arise where in or out of state suppliers may be unwilling to supply an operator that conducts activities in New Mexico due to lack of protections. Lacking an adequate supply chain, operators may be forced to do business in a more friendly business environment.

DUPLICATES

Duplicates HB 317 as substituted by HBIC “Space Flight Entity” Definition Expansion

TECHNICAL ISSUES

The Administrative Office of the Courts (AOC) notes:

> The existing NMSA 1978, Section 41-14-2 (C) definition of space flight entity refers to any “public or private entity” without reference to its business form. As a result, this should be read to include virtually any type of business form from a sole proprietorship, an unincorporated association, or even some sort of public/private joint venture. The language that would expand this subsection states that it applies to activities engaged in by entities with a license granted to “a corporation or to its subsidiaries or affiliates….” This would seem to be more limiting language than already exists in the Act.

The Attorney General's Office (AGO) notes:

> The proposed amendment to NMSA 1978, 41-14-2(B) could potentially cause confusion in the future. It pegs New Mexico law to 42 U.S.C. § 70102, but it also includes a list of space flight activities. If in the future, 42 U.S.C. § 70102 is amended in such a way that creates a conflict with the list in NM statutes, it would create ambiguity.

OTHER SUBSTANTIVE ISSUES

1) The bill broadens the legal framework of informed consent, which is consistent with the Commercial Space Launch Amendments Act (CSLAA) 2004 federal framework, to be on par with Virginia. Currently, Florida and New Mexico's laws solely protect the operator and so do not encourage location of manufacturing activities in the state.

2) 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.

3) Not having this legislation creates uncertainty with respect to insurance costs and availability of supply chain for operators. New Mexico is thereby placed at a competitive disadvantage to Virginia and Florida and other states having this type of legislation.

4) This does not limit any liability regarding injury or property damage to non-participating 3rd parties. Any injury to non-participants or damage to their property is not covered by this bill. In fact, the operator who is licensed by the Office of Commercial Space Transportation (generally referred to as FAA/AST is the regulatory body which determines if the vehicle and operation is safe enough to conduct spaceflights) will be required to carry up to $500 million in insurance for 3rd party damage or injury as well as the FAA providing a $1.5 billion dollar policy to ensure proper coverage for any incident.

AMENDMENTS

AOC recommend substituting the words "to a corporation or to its subsidiaries or affiliates" on page 2, lines 16-17, with "to a public or private entity or to its subsidiaries or affiliates."

The AGO suggests that it may be wise to remove the list of space flight activities in subsection B and simply incorporate the federal statute by reference to forestall the possibility future ambiguity arising from the potential conflict described above. This decision should be weighed against the value of having the list in the statute to provide convenient notice to concerned parties.

DL/mew