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FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 02/28/03 HB 743

SHORT TITLE: State Exemption from Post-Judgment Interest SB _____

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

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

SUMMARY

Synopsis of Bill

House Bill 743 amends Section 56-8-4 NMSA 1978, to require the state and its subdivisions to pay post judgment interest at the rate of 8.75% per year. Judgments rendered on written instruments having different interest rates are allowed and are computed at rates no higher than those specified in such instruments. If judgments are based on tortious conduct, bad faith, intentional or willful acts, interest rates shall be 15%.

State and political subdivisions are currently exempt from paying post judgment interest.

Significant Issues

Under this bill, the state and its subdivisions remain exempt from paying post judgment interest in cases where the plaintiff was the cause of unreasonable delay in the adjudication of the plaintiff's claims and where the defendant had previously made a reasonable and timely offer of settlement to the plaintiff.

FISCAL IMPLICATIONS

The AGO states that this bill would increase the amount of judgments paid by the state and political subdivisions by requiring post judgment interest from the date the judgments are entered until they are paid.

State and political subdivisions may face substantially increased liability resulting from the imposition of mandatory post-judgment interest, even when delays in paying judgment are beyond the public body's control. For example, in some instances a state agency may not be able to pay a judgment immediately if the requisite funds have not been appropriated by the legislature.

TECHNICAL ISSUES

The General Services Department (GSD) states that this legislation attempts to overrule the New Mexico Supreme Court's holding in *Trujillo v. City of Albuquerque*, 1998-NMSC-031, 125 N.M. 721, 965 P.2d 305 (1998). In that case, the Court found that plaintiffs may not recover post-judgment interest against the state. Section 41-4-19(B) provides: "No judgment against a governmental entity or public employee for any tort for which immunity has been waived under the Tort Claims Act shall include an award for exemplary or punitive damages or for interest prior to judgment." Section 56-8-4(D), as currently written, immunizes the state and its political subdivisions from post-judgment interest, "except as otherwise provided by statute or common law."

The proposed legislation seeks to change current subsection (D) of Section 56-8-4 by adding the words "Subsection B of". This change to the statute may give rise to lawsuits seeking clarification of this new law, which is a question of statutory construction which a court will review de novo.

This bill implies that the remaining portions of Section 56-8-4 would now apply to the state; thereby negating the protection the state currently has from post judgment awards.

The New Mexico Supreme Court has recognized the policy reasons that support limiting damage awards against the government, and as a matter of policy, the New Mexico Legislature and the Supreme Court have recognized the unique nature of the duties adopted by the state that set it apart from other litigants. This legislation proposes to change the policy of the state and may expose the state to increased financial liability.

RLG/lr