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## FISCAL IMPACT REPORT

SPONSOR: Payne DATE TYPED: 1/31/03 HB \_\_\_\_\_

SHORT TITLE: Limit Punitive Damage Awards SB 6

ANALYST: Chavez

### APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

State Highway & Transportation Department (SHTD)  
 Administrative Office of the Courts (AOC)  
 LFC Files

Conflicts with SB 71.

### SUMMARY

#### Synopsis of Bill

Senate Bill 6 sets forth certain requirements as to (1) how punitive damages can be asserted in civil lawsuits, (2) the burden of proof required in order to be awarded punitive damages in civil lawsuits and breach of contract cases and (3) it places a limit on the total amount of punitive damages that can be awarded in a civil lawsuit.

#### Significant Issues

The bill limits the amount of punitive damages that can be recovered by the state. The amount of punitive damages awarded is the greater of two hundred fifty thousand dollars or up to three times the amount of compensatory damages awarded to a claimant.

### FISCAL IMPLICATIONS

The bill does not have an appropriation. However, according to the Administrative Office of the Courts (AOC) there may be a fiscal impact on the courts as a result of potential new hearings set forth in this bill. The bill restricts the amount of punitive damages that can be awarded in a civil lawsuits thus, limiting the state's recovery. The bill also limits the amount of punitive damages

that can be recovered from the state in constitutional rights cases under certain circumstances.

### **ADMINISTRATIVE IMPLICATIONS**

The AOC indicates that there may be an administrative impact on the courts as a result of potential new hearings set forth in this bill.

### **CONFLICT**

Senate Bill 71 proposes to change how punitive damages are awarded in tort litigation. However, rather than placing limits on the amounts of awards, it requires that punitive damage awards be paid to the state general fund.

### **TECHNICAL ISSUES**

1. On page 1, section 1 A. the bill sets forth a standard for awarding punitive damages in “civil lawsuits” and sets forth several procedural requirements. On page 2, section 2 the bill sets forth a different standard for the award of punitive damages in breach of contract actions. Technically, a breach of contract action is a civil lawsuit. It is suggested that on page 1, line 19, the words “except in breach of contract actions” follow the words “civil lawsuit.”
2. It is unclear if the same procedural requirements as set forth in Section 1 also apply to Section 2.
3. Pursuant to section 1 C of the bill “a court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and upon a finding by the court, after a review of supporting and opposing affidavits or after a hearing, that the claimant will prevail on the claim for punitive damages.” According to the bill punitive damages will not be awarded unless a judgment for compensatory damages is rendered. Thus, it is suggested that a claim for punitive damages be considered only after an award for compensatory damages has been awarded. This will save on judicial time and resources. Thus, it is suggested that on page 2, line 4, after the word “only,” the words “after a trial which awarded compensatory damages is concluded and” be added. It is also suggested that on page 2, line 7 the word “will” be replaced with the word “may” since the judge is not ruling on the hearing but is assessing whether a valid claim for punitive damages is present.
4. The adoption of the above mentioned suggestion in item 3 would result in two separate proceedings: (1). trial of compensatory damages and (2). a determination of punitive damages. Therefore it is suggested that on page 2, section D be deleted and that section D be replaced with: “Evidence relevant to the claim for punitive damages shall not be admissible in another proceeding to determine whether compensatory damages are to be awarded.”
5. On page 2, line 17, it is suggested that after the words “Punitive damages” the words “if otherwise permitted by applicable state or federal law” be added. This is to prevent future litigants against governmental entities in breach of contract cases from arguing that the legislative intent of the bill is to do away with current New Mexico case law which states that punitive damages may not be awarded in breach of contract actions against governmental entities. Torrance County Mental Health Program, Inc. v. New Mexico Health and Environment Dept., 113 N.M. 593, 830 P.2d 145 (1992).