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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/10

SPONSOR Martinez, R.C. LAST UPDATED HB

SHORT TITLE Land Grant Tort Liability Coverage SB 94

ANALYST Archuleta

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*Indeterminate See fiscal implications	*Indeterminate See fiscal implications		Recurring	Public Liability Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

General Services Department (GSD)

SUMMARY

Synopsis of Bill

Senate Bill 94 allows community land grants, governed as political subdivisions of the state, to purchase coverage from the Risk Management Division (RMD) of the General Services Department, for liability waived under the Tort Claims Act, but no coverage can be purchased for activities that RMD determines pursuant to its rules to be a business enterprise.

FISCAL IMPLICATIONS

*Because the Risk Management Division charges agencies for its services, fiscal implications are minimal. However, depending on the outcome of any civil rights litigation, RMD may have to pay significant amounts of money because there are no liability limits on tort claims for civil cases.

SIGNIFICANT ISSUES

DFA notes the following: Senate Bill 94 takes away the authority of the Director of the Risk Management Division to determine whether the risk is commercially uninsurable or insurable only at a cost or subject to conditions which the Director deems unreasonable. This would give

the land grants the opportunity to purchase liability coverage (Paragraph (1) of Subsection A of Section 41-4-25 NMSA 1978). The Director of the Risk Management Division would only have to determine if the land grant has paid all insurance premiums and public liability fund assessments in a timely manner or has had good cause for failing to do so. The land grant would have to pay for liability coverage of uninsurable risks by paying into the fund an assessment to be determined by the Director, which shall be based on risks to be insured (Paragraph (2) of Subsection A of Section 41-4-25 NMSA 1978).

The bill excludes liability coverage of an activity conducted by the community land grant that is determined by the Director of the Risk Management Division pursuant to division rules to be a business enterprise. This language was included because there are two land grants that own liquor establishments or bars and the Risk Management Division does not want to provide liability coverage for these types of business enterprises.

PERFORMANCE IMPLICATIONS

Tort claims against community land grants covered by the Risk Management Division will be processed and handled by the Risk Management Division. There will be minimal impact to agency performance. Litigation is contracted out to attorneys.

ADMINISTRATIVE IMPLICATIONS

RMD may see an increase in the number of tort claims filed and establish premiums for insurance coverage from each individual land grant. RMD will have to provide training to the community land grants on the application process as well as Section 41-1-6 through 41-4-12 NMSA. Each section reviews each area of liability that applies to community land grants.

OTHER SUBSTANTIVE ISSUES

Not all land grants are governed as political subdivisions of the state. In 2004, the New Mexico Legislature designated land grants covered by NMSA 1978, §§ 49-1-1 to -18 as political subdivisions of the state. Land grants covered by these provisions are, among other things, land grants confirmed by the Congress of the United States and governed by a Board of Trustees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The consequences of not enacting this legislation would prohibit individual community land grants that are political subdivisions from applying for liability coverage for any risk for which immunity has been waived under the Tort Claims Act.

In addition, if this legislation is not passed there will be the burden of higher costs for individual land grants for liability coverage and in some cases liability risk will be uninsurable in the private sector.