

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/11

SPONSOR McSorley LAST UPDATED _____ HB _____

SHORT TITLE Wrongful Incarceration Compensation SB 573

ANALYST Segura

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown			Public Liability Fund

(See Fiscal Impact)

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
 Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Administrative Office District Attorney (AODA)

SUMMARY

Senate Bill 573 proposes to provide compensation to a person who is exonerated after being wrongfully convicted and imprisoned. The Public Liability Fund is amended to provide payment for each year of wrongful incarceration.

FISCAL IMPLICATIONS

Senate Bill 573 does not contain an appropriation. The bill amends Chapter 41-4-23 relating to the Public Liability Fund, to insert a new subsection (8) for which money from the fund may be expended, to include paying damages for wrongful incarceration.

According to AOC, the person would only be entitled to receive compensation for time that he/she would not otherwise have been incarcerated for another crime. Acceptance of damages precludes the person from pursuing any further action against the state or political subdivision regarding the conviction or incarceration. Upon presentation of the court's order, GSD's Risk Management Division would pay the damages amount from the public liability fund.

The GSD state that civil rights suits against state entities, (but not local public bodies) are currently litigates under the direction of the Risk Management Division. The division has input into litigation strategy, settlement discussions, settlement offers. Under the proposed bill it is unclear what input, if any the division will have concerning the determination of the length of wrongful incarceration, whether a second trial is warranted, possible settlement negotiations. To the extent that the division simply serves as a check writing service for decisions made by other entities, the division's stewardship of the public liability fund becomes more difficult.

The bill proposes to award damages in the amount of \$50,000 for each year the person was wrongfully incarcerated up to 20 years, a maximum award of \$1,000,000. Partial years served would be compensated proportionally.

SIGNIFICANT ISSUES

The GSD raises an issue with the enactment of the bill, because the bill does not take into account the fact that a person could be wrongfully incarcerated with no determination of wrongdoing by the DA's or Attorney General, agencies covered by the public liability fund, since they may have complete prosecutorial immunity. The liability may lay with city or county law enforcement officials. These entities are not covered by the public liability fund, so the fund will be forced to pay for actions undertaken by entities that do not currently pay a premium into the fund.

RS/bym