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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/12

SPONSOR White LAST UPDATED _____ HB 239

SHORT TITLE Expand Space Flight Informed Consent Act SB _____

ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
	(\$1,000.0)*	(\$1,500.0)*	Recurring	New Mexico Spaceport Fund

(Parenthesis () Indicate Revenue Decreases)

*The Spaceport Authority estimates the loss of one additional tenant expected in FY13 and additional operator activity in FY14. The estimate does not consider the value of lost revenue and job creation from other customers who may have come to NM with the legislation in place.

Duplicates SB 3

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 New Mexico Spaceport Authority
 Administrative Office of the Courts
 Administrative Office of the District Attorneys

SUMMARY

Synopsis of Bill

The Attorney General's Office provides the following summary:

This bill makes five substantive changes to Section 41-14-1 NMSA 1978.

First, the bill adds or modifies numerous definitions to the statute, including "crew", "launch", "Launch vehicle", "participant", "participant injury", "payload", "reenter/reentry", "reentry vehicle", and "space flight activities." Where definitions are modified, the bill replaces references to definitions under the applicable United States Code or other federal provisions with specific definitions.

Second, the bill significantly amends and modifies section 41-14-3(A) NMSA 1978 to limit liability for a space flight entity when a person signed the specified warning and agreement under the statute, with the identified exceptions.

Third, under 41-14-3(B)(1) NMSA 1978 the bill changes the liability exceptions to subsection A from the dual possibilities of gross negligence or willful/wanton disregard for safety to the singular instance of gross negligence evidencing willful/wanton disregard for safety.

Fourth, the bill further eliminates an actual or constructive knowledge of a dangerous condition liability exception previously found under 41-14-3(B)(2) NMSA 1978. In so doing, the bill retains and moves what previously had been contained in subsection three, the intentional injury of a participant liability exception, into subsection two.

Finally, in accord with the other substantive changes made by the bill, the bill modifies the title and substance of what had previously been called the “Warning and Acknowledgement” into the revised “Agreement and Warning” under 41-14-4 NMSA 1978. Subsection 4 also adds specific procedural/form requirements that when complied with, render the new “Agreement and Warning” enforceable, not unconscionable, and not against public policy.

FISCAL IMPLICATIONS

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

Although it is difficult to estimate the fiscal impact of not expanding protections under the Space Flight Informed Consent Act, the New Mexico Spaceport Authority (NMSA) reports that it may be reasonable to expect that Spaceport America’s primary tenant, Virgin Galactic, would have its supply chain efficiency reduced in the long term, resulting in higher than necessary operational costs and reduced job creation in the State of New Mexico.

Beyond affecting Virgin Galactic, NMSA believes the same concerns will negatively impact the ability to attract other space flight entities, tenants and users at Spaceport America. Two separate potential tenants at Spaceport America, Sierra Nevada Corporation and Rocket Crafters, Inc, have both recently indicated an unwillingness to move to New Mexico and operate from Spaceport America, absent this legislation.

It is estimated by NMSA that a growing, recurring revenue stream from additional customers valued initially as high as \$1 million per year from lease and user fees would be lost without these legislated protections for the commercial space industry.

If the NMSA is unable to attract additional tenants and manufacturers, the economic potential of Spaceport America to the state in terms of job creation, tourism enhancement, and industry development will be substantially reduced.

The Administrative Office of the Courts notes the bill would foreclose common law tort liability

against the Spaceport in many respects. Such statutory tort liability prohibitions are intended to prevent lawsuits. As such, HB 239 would foreseeably reduce the caseload in the New Mexico courts. It is simply conjecture to try to determine how many mishaps may occur at the Spaceport, or how many actual lawsuits arising from such injuries HB 239 might prevent. Therefore, any attempt to try to provide a concrete fiscal impact would be unhelpful speculation.

SIGNIFICANT ISSUES

According to the New Mexico Spaceport Authority, this bill modifies Section 41-14-1 NMSA 1978, Space Flight Informed Consent Act, being Laws 2010, Chapter 8, Section 2 relating to informed consent for commercial spaceflight in New Mexico, by improving protections for component manufacturers and suppliers to space flight entities that operate in New Mexico. Not having this legislation creates uncertainty with respect to insurance costs and availability of supply chain for operators and places New Mexico a competitive disadvantage to Virginia, Florida, Texas, and other states having this type of legislation.

The bill recognizes the assumption of risk specific to the participant only 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 (CSLAA) of 2004, and is similar to laws in other space states, such as Texas, Florida and Virginia. The Federal regulatory body responsible for spaceflight licensure is the Federal Aviation Administration - Associate Administrator for Commercial Space Transportation (“FAA”) There is value to the State in supporting this bill which limits the ability of a participant or his or her heirs to seek claims against an operator or it supply chain for injury or death resulting from a flight licensed by the FAA. The protections do not apply in cases of gross negligence or failure of a participant to sign the consent/waiver form.

In general terms, this bill makes the following changes to the original legislation:

1. Changes the definitions so that the New Mexico law does not incorporate federal laws by reference, which is prohibited by Article 4 Section 18 of the New Mexico Constitution.
2. Extends to manufacturers and suppliers of components, services and space craft, the same protection that the operators and companies like Virgin Galactic have in law; that is they will not be liable to passengers for injury or death on a space flight unless they act intentionally or with gross negligence.
3. Clarifies that manufacturers and suppliers are not liable for acts of simple negligence.
4. Amends certain portions of present law that explain the limitations of liability of the space flight entity in the event of a space flight accident. This section leaves intact the liability for intentional acts or gross negligence.

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, spacecraft 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.

This bill sets New Mexico on equal competitive footing with other states such as Texas, Florida, and Virginia, which explicitly offer indemnification to suppliers and manufacturers, and builds a level of confidence that the entire supply chain of the new commercial spaceflight industry can grow and develop in New Mexico.

TECHNICAL ISSUES

The Administrative Office of the District Attorneys notes that the bill does not contain language making gross negligence on the part of the space flight entity a criminal act; however, such behavior could make the space entity/employee subject to criminal prosecution. The Legislature may want to consider clarifying if the only liability of the space flight entity is civil or if it can also be criminal.

PERFORMANCE IMPLICATIONS

The legislation will maintain New Mexico's leadership in commercial spaceflight and create economic and educational opportunities for New Mexicans. New Mexico's ability to attract and retain commercial spaceflight operating customers will be significantly impacted should this legislation not be passed.

DUPLICATION

Duplicates SB 3

OTHER SUBSTANTIVE ISSUES

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 FAA 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.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current "Space Flight Informed Consent Act" will remain in effect, leaving references mainly to Federal sources, and continuing to allow two other exceptions for tort claims under the act: first either gross negligence or willful/wanton disregard for safety and second actual or constructive knowledge of a dangerous condition. The Warning and Acknowledgement statement would remain the same.

New Mexico's \$209 million investment in Spaceport America would be jeopardized.

New Mexico's leadership in commercial space may be impacted, which limits job creation, tourism and education.

- a. NMSA and New Mexico will be at a competitive disadvantage to Texas, Virginia and Florida.
- b. NMSA and New Mexico will have difficulty attracting and retaining customers.

Future customers and jobs may be at risk. Recent NMSA projections indicate nearly 2000 jobs

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as a result of the spaceport and the commercial space industry within the first 5 years of operation. Over 900 New Mexicans have been employed at Spaceport America to date.

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