

NMDOT BILL ANALYSIS 2024 REGULAR SESSION

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute, or a correction of a previous bill}

Check all that apply:

Original X Amendment
Correction Substitute

Date 1/28/2024

Bill No. SB 115

Sponsor: Bill Tallman

Agency/ Code: NMDOT - 805 – Office of General Counsel

 Risk Management Insurance

Person Writing Analysis: Aaron Frankland

Short Title Coverage Limits

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SECTION II: FISCAL IMPACT

None currently identified.

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 115 (SB 115) amends Section 15-7-3 NMSA 1978 by limiting Risk Management Division's (RMD) compulsory purchase of insurance coverage to \$500,000 for property damages, \$1,050,000 for general liability insurance, and as set forth in Section 41-4A-6 NMSA 1978 for civil rights liability. SB 115 then requires that no settlement by RMD can be made in excess of \$250,000 from the public property reserve fund or \$500,000 from the public liability fund without written approval by the secretary of finance and administration (DFA). Last, SB 115 compels the director of RMD to notify the legislative finance committee (LFC) within 30 days of receipt of settlement approval by the secretary of DFA regarding said approval.

FISCAL IMPLICATIONS

While the NMDOT anticipates that SB 115 could have a negative impact on settlements, as well as lead to a rise in litigation exposure, this impact and the associated effect is presently not quantifiable.

SIGNIFICANT ISSUES

In conjunction with tort litigation, RMD typically enters into mediation with settlement authority established beforehand. However, it is not entirely uncommon that the estimated settlement authority may not meet what the parties are able to reach through the course of mediation. Depending on the nature of each individual suit, this may be in thousands to tens of thousands. While RMD may currently be in a position to negotiate amongst itself a re-authorized amount to settle cases, SB 115 impedes this process. Namely, DFA does not attend mediations and is

typically uninformed of cases through the course of litigation. Having to reach out to DFA in an impromptu fashion to receive authorization to settle invariably risks impeding settlement negotiations and may provide a cooling effect to mediations overall.

Settlement is an important facet of case litigation and serves often as a tool to minimize risk of financial exposure upon the state and/or its agencies. With the inclusion of SB 115's additional step to seek approval by the DFA, the state risks seeing fewer settlements, successful or otherwise, a rise in defense costs, and more cases going to trial. This in turn raises risks of exposure. However, as the NMDOT is not privy to what avenues RMD currently takes to address settlement authority between it and the DFA, NMDOT ultimately defers to RMD regarding the impact of SB 115.

Also in conjunction with tort litigation, as well as other matters of litigation that involve RMD, the monetary caps for property damage insurance and general liability insurance may be problematic. First, SB 115 is unclear whether the coverage is per incident, and what each incident entails. That is, plaintiffs may try to split up what the state identifies as a singular incident with the intention to separate out claims by parties and raise the cost of settlement and exposure. Second, while NMDOT is not privy to whether these coverage caps account for all veins of insurance coverage, and defers to RMD, the stagnant caps may run counter to the Tort Claims Act should maximum liability set forth in Section 41-4-19 NMSA 1978 be amended. What would be more sensible is to tie caps to Section 41-4-19, along with any other relevant statutory caps identified by RMD, just as SB 115 does with civil rights actions.

PERFORMANCE IMPLICATIONS

See above.

ADMINISTRATIVE IMPLICATIONS

See above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

See above.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

See above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RMD and state agencies will continue to strive to minimize risk of exposure and litigate as needed

under the present restrictions placed on RMD and state agencies. RMD will continue to coordinate with DFA as established by past practices or otherwise amended as between RMD and DFA.

AMENDMENTS

None identified.