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FISCAL IMPACT REPORT

SPONSOR	House Appropriations and Finance Committee	LAST UPDATED	
		ORIGINAL DATE	03/11/2025
SHORT TITLE	Childhood Sexual Abuse Statute of Limitations	BILL	CS/CS/House Bill
		NUMBER	73/HJCS/HAFCS
		ANALYST	Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Claims and Insurance		See Fiscal Implications	See Fiscal Implications		Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Related to House Bill 87

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

New Mexico Attorney General (NMAG)

Law Offices of the Public Defender (LOPD)

Children, Youth and Families Department (CYFD)

Public Schools Insurance Agency (NMPSIA) – only the NMPSIA agency input was written after the HAFC substitute.

Agency Declined to Respond

General Services Department (GSD)

SUMMARY

Synopsis of HAFC Substitute for House Bill 73

The House Appropriations and Finance Substitute for House Bill 73 (CS/CS/HB73) alters Section 37-1-30 NMSA 1978, which currently lists a three-year time period or the first instant of the person's 24th birthday as statutes of limitations, replacing them with the phrase “the person's fifty-

eighth birthday if the action is against a private person; provided that such an action may not be commenced, pursuant to this subsection, against the state, a political subdivision of the state or a public employee acting within the scope of the employee's duties.” If actions for damages against a non-public entity have previously been time-barred, they can be revived anytime before June 20, 2028.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

CS/CS/73 would extend the statute of limitations for child sexual abuse damages for non-public entities. It is not clear what the current HAFCS substitution would do with regard to sexual abuse claims against public entities and employees of those entities. If it were determined that claims against public entities and their employees were to be left to the Tort Claims Act, with its two-year statute of limitations, the outcome would be no different than it would be without the passage of this act. Commenting on the HAFCS substitute, NMPSIA sees no financial implications from passage of that substitute. However, this may be ineffective. While the Tort Claims Act would remain the exclusive remedy in New Mexico for tort claims against government entities or public employees, the immunity provided under the act is waived under specific situations. The “building waiver,” for example, permits suits against the Children, Youth and Families Department (CYFD) if the department fails to provide housing for children in its care that meets minimum health and safety standards. CS/CS/HB73 could be challenged in court as creating an exemption from the Tort Claims Act for childhood sexual abuse. LFC analysis for the original bill, which did attempt to exempt state agencies from the extended statute of limitations, had a significant fiscal impact. These impacts are discussed below.

The Children, Youth and Families Department (CYFD) noted the possibility that the original bill could open that agency to legal action:

HB73 has the potential to involve CYFD in additional lawsuits that would have otherwise been barred per the original statute of limitations. This impact could then lead to significant additional litigation costs and potential damages levied against CYFD. Additional litigation would also have the downstream effect of creating a further burden on CYFD legal staff and general resources.

According to the New Mexico Sunshine Portal, in calendar year 2024 CYFD issued settlements to several different plaintiffs for cases of sexual abuse at an average of \$650 thousand per award. The 2023 LFC program evaluation unit report *Major Risk Funds of the Risk Management Division* noted an additional CYFD child sexual abuse settlement made in 2022 for \$985 thousand. Using these settlements as a range and, assuming the original would result in one additional successful lawsuit against and subsequent settlement made by CYFD per year, this bill would have an additional operating budget impact of between \$650 and \$985 thousand annually.

CYFD also suggests that the original bill’s impact would result in “a significant increase to agency expenditures related to our liability rates. CYFD is obligated to pay a liability rate to the General Services Division based on the dollar amount of settlements paid out from prior years.” Further increases in CYFD’s liability rate will depend on the number of settlements made by CYFD as a result of the passage of HB73.

The Public Schools Insurance Agency (NMPSIA) writes the passage of the bill as originally written “would have [had] a domino effect on public schools.” NMPSIA notes:

Notably, there will be a need to increase NMPSIA’s self-insured retention. Securing reinsurance and excess insurance will become more difficult when prospective excess insurance companies are told that they will be financially responsible for claims without any reasonable time limit—possibly 30 or 40 years. Essentially, an insurance company

offering an annual policy for schools will be told that it must be responsible for claims brought decades after the policy was offered. This increases the insurance company's financial exposure and could quite possibly lead them to a decision not to even offer a policy based on the risk. Even if an insurance company did decide to offer such policies, the premiums paid by NMPSIA would be astronomical. NMPSIA believes school insurance premiums could increase anywhere from 20-40 percent for member schools. A school district such as the Rio Rancho Public Schools (RRPS) presently pays over \$1,700,000 for annual general liability premiums. A potential 40 percent increase would cost RRPS approximately \$680,000 out of its operating budget."

NMPSIA also mentions the current frequency of child sexual abuse litigation:

Over the last 14 years, from Fiscal Year 2012 (July 1, 2011 – June 30, 2012) through FY2025 (July 1, 2024—January 31, 2025), 176 sexual abuse and molestation claims (faculty on student, student on student, faculty on faculty) have been reported or investigated, resulting in a total cost in excess of \$100 million from FY 2022 through FY2025 are considered immature, and NMPSIA expects claims and costs to rise.

SIGNIFICANT ISSUES

CYFD indicates:

This change is consistent with current knowledge around the disclosure of traumatic childhood events, such as child sexual abuse. A person subjected to sexual abuse as a child may not be ready to remember or process the trauma until later in adulthood. Alternatively, a young child may disclose enough to a medical or mental health provider to trigger a reporting event but not be ready or old enough to verbalize a disclosure with the detail and clarity needed to support a cause of action. The long-term impact on a child may also be better assessed later in life.

CYFD, the New Mexico Attorney General (NMAG), and the Administrative Office of the Courts (AOC) all note that applying this change retroactively may result both in a greater number of cases being brought involving distant child sexual abuse and that evidence in these trials may be difficult to obtain many years after the alleged events occurred. AOC notes a National Conference of State Legislatures finding that "child victims frequently do not discover the relationship of their psychological injuries to the abuse until well into adulthood—usually during the course of psychological counseling or therapy. They may not even discover the fact of such abuse until they undergo such therapy."

The Administrative Office of the District Attorneys indicates the bill's retroactive application of change in statute of limitations would likely survive a legal challenge.

TECHNICAL ISSUES

It is not clear what statute of limitations would apply to public entities or if the statute of limitations would be the same as for other actions against public employees and public entities, or two years from time of the crime, as is the case under the Tort Claims Act, Section 41-4-15 NMSA 1978.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 87, nonconsensual touching clarification.

ALTERNATIVE

NMPSIA proposes that:

If the Legislature wants to compensate people who were sexually abused as children by public school employees, then it should consider establishing a victim's compensation fund and related administrative procedures and hiring people to administer it. This would be less costly – both in monetary costs and intangible costs to schools of the time required in defending lawsuits – than allowing civil suits for damages to be brought any number of years after the abuse occurred. This will necessitate a comprehensive look at funding and the cost of creating such a fund.

LC/hj/SL2/hg/rl