

NOTE: As provided in LFC policy, this report is intended for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used in any other situation.

Only the most recent FIR version, excluding attachments, is available on the Intranet. Previously issued FIRs and attachments may be obtained from the LFC office in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Larranaga DATE TYPED: 02/14/01 HB 400
 SHORT TITLE: Punitive Damages Tax Act SB _____
 ANALYST: Williams

APPROPRIATION (see text)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
				Recurring	Crime Victims Reparation Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (see text)

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
			Recurring	Crime Victims Reparation Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files
 Crime Victims Reparations Commission
 Taxation and Revenue Department

SUMMARY

Synopsis of Bill

The bill would authorize a 65 percent tax on punitive damages award by the courts. The tax would be due by the 5th day of the month following the month in which the award is received. The receipts would be distributed to the crime victims reparation fund. Administration, collection and enforcement would be subject to the provisions of the Tax Administration Act. The effective date of the bill is July 1, 2001.

Currently, the recipient of a punitive damage award is subject to state and federal income tax. TRD notes the combined tax rate for a large award can exceed 48 percent, and this tax is not deductible against income tax.

Significant Issues

TRD notes the total amount of punitive damages awarded by courts could vary between \$1 and \$10 million per year; however, there is currently no separate record-keeping of punitive damage awards. Typically, New Mexico courts impose relatively few \$1 million punitive damage awards. Potentially 10 or fewer awards per year would be involved.

FISCAL IMPLICATIONS

The amount generated from this tax is highly uncertain. According to TRD, the bill might generate \$400.0 to \$4,000.0 for the crime victims reparation fund.

Continuing Appropriations

This bill effectively provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for funds other than the general fund. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

The bill could add additional costs for courts for tracking and reporting; however, Administrative Office of the Courts did not respond.

TECHNICAL ISSUES

The effective date may need to be modified to reflect awards awaiting appeal.

TRD notes that it would be complex to determine when the taxable event occurred, given current bill language. Clarification of the receipt of award is needed.

Punitive damages should be defined.

OTHER SUBSTANTIVE ISSUES

TRD notes this tax could be overturned as arbitrary, capricious and confiscatory.

AW/ar