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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/30/19  
**LAST UPDATED** 3/01/19      **HB** 202/aHF1#1

**SPONSOR** Small

**SHORT TITLE** Conservancy District Roads & Tort Immunity      **SB** \_\_\_\_\_

**ANALYST** Torres

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Energy, Minerals, and Natural Resources Department (EMNRD)

New Mexico Attorney General (NMAG)

### SUMMARY

#### Summary of HF1#1 Amendment

The House Floor Amendment #1 to House Bill 202 limits the exclusion from the waiver of immunity to the specific portion of irrigation and conservancy district property that has been authorized for use as a public road.

#### Summary of Original Bill

HB202 amends NMSA 1978, Section 41-4-11, relating to the waiver of immunity of public employees acting within the scope of their duties for liability from damages during the construction and subsequent maintenance of highways and streets. The type of liability at issue arises from bodily injury, wrongful death or property damage caused by the negligence of any public employee acting within the scope of their duties in the construction and maintenance of any bridge, road, culvert, street, alley, sidewalk or parking.

HB 202 would extend the waiver from immunity to irrigation and conservancy districts that authorize any part of their property to be used as a road provided that the irrigation or conservancy district has entered into a mutual agreement with the state agency or governmental

entity operating and maintaining the road. HB202 further provides that the state agency or governmental entity operating and maintaining the road is subject to liability as provided in the Tort Claims Act.

## **FISCAL IMPLICATIONS**

The Administrative Office of the Courts (AOC) notes that there is likely a fiscal impact proportional to the enforcement of this law and commenced prosecutions. It is likely minimal and absorbable by the current operating budget.

## **SIGNIFICANT ISSUES**

The NMAG notes:

With respect to roads on district lands that are maintained by a state agency or other governmental entity, it is not clear that the bill would result in a substantive change in the law. The waiver of immunity in Subsection A for the negligence of public employees in the construction and operation of roads is not dependent on the ownership status of the land on which the road is located.

EMNRD highlights:

Irrigation and conservancy districts are not defined. Definitions are needed to distinguish these entities from other similar entities such as acequia associations, water user associations, and community ditch associations.

## **TECHNICAL ISSUES**

The NMAG finds the following technical issues:

HB202 is ambiguous as to what the written agreement referenced in subsection (C)(1), between the irrigation and conservancy district, and the public agency or governmental entity, must encompass. If it is expected that the agreement will simply provide for the state agency or governmental entity to assume operation and maintenance, then subparagraphs (C)(1) and (C)(2) could be combined into one clause at the end of Paragraph C to read: "...provided that the irrigation or conservancy district has entered into a written agreement with the state agency or governmental entity under which the state agency or governmental entity agrees to assume the operation and maintenance of that portion of the district's property used for that road." Alternatively, the proposed amendment may be suggesting that the agreement must explicitly provide that the state agency or other governmental entity agree to be subject to liability as provided in the Tort Claims Act.

IT/sb