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FISCAL IMPACT REPORT

ORIGINAL DATE 03/06/21

SPONSOR Cervantes LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Defense of Qualified Immunity SB 376

ANALYST Dick-Peddie/Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
GSD	\$2,925	\$11,700	\$11,700	\$26,325	Recurring	RMD Public Liability Fund
Other	Unknown, Significant	Unknown, Significant	Unknown, Significant	Unknown, Significant	Recurring	Local Governments, Public Schools
Total	Over \$2,925	Over \$11,700	Over \$11,700	Over \$26,325	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 4 Conflicts with House Bill 307

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

New Mexico Counties

General Services Department (GSD)

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

University of New Mexico Health Sciences Center (UNM-HSC)

SUMMARY

Synopsis of Bill

Senate Bill 376 (SB376) amends the New Mexico Tort Claims Act (NMTCA) to prohibit the use of “qualified immunity” as a defense for law enforcement officers and provides for recovery of reasonable litigation expenses and attorney’s fees to a prevailing party in a successful action against law enforcement. It further applies the statutory revisions to all cases pending or on appeal on the date of enactment. Additionally, the bill increases the statute of limitations for all actions under the NMTCA

and increases the liability limits per occurrence, or “caps” for all categories of recovery. The increases are as follows:

- Property from \$200 thousand to \$500 thousand,
- Medical from \$300 thousand to \$800 thousand,
- Economic and emotional damages (no-medical and property) from \$400 thousand to \$1.2 million,
- Cumulative cap for nonmedical from \$750 thousand to \$2 million.

The liability caps would automatically increase annually by the percentage increase of the consumer price index for all urban consumers, but would not decrease should the consumer price index decrease.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The General Services Department (GSD) provided the chart below comparing the liability caps proposed in SB376 with current maximums:

Category	Current Limit	Proposed Limit
(1) Damage to real property	\$200,000	\$500,000
(2) Past and future medical and medically-related expenses	\$300,000	\$800,000
(3) Damages available to any one person, other than real property or medical	\$400,000	\$1,200,000
Cap for categories (1) and (3) combined	\$750,000	\$2,000,000

Should SB376 be enacted, GSD anticipates the total number of tort claims would increase by at least 10 percent, from about 1,580 cases per year to 1,740 cases. Given this increase in cases, and assuming a 25 percent increase in award amounts to account for the new maximum liability caps provided for in SB376, GSD projects annual settlements would rise from \$20.8 million to \$28.5 million. GSD also notes the bill would increase the cost of defending claims by 15 percent, from \$17 million to \$19.5 million, and increase legal fees associated with law enforcement cases by \$1.5 million, for a total increased cost to RMD’s public liability fund of \$11.7 million annually.

The Public School Insurance Authority (NMPSIA) notes the significant increases in damages available under the NMTCA would affect coverage for NMPSIA and its member schools for the following areas of insurance: General Liability/Bodily Injury, Personal Injury, Auto Bodily Injury, Auto Property Damage and Professional Liability. NMPSIA reports that, in consultation with its third-party administrator, the agency “anticipates that its costs per claim in these areas will double in value,” increasing from \$1 million to \$2 million annually, which would in turn increase premiums to the 202 members of NMPSIA.

Additional costs to New Mexico counties and local governments are difficult to accurately project but are likely significant. New Mexico Counties predicts that, in addition to making it more difficult for local governments to secure and maintain reinsurance, the cost of law enforcement claims could increase by as much as \$1.8 million in the first year after the bill's enactment. The counties also note that plaintiffs' counsel often charge higher rates than defense council, and therefore, counties could be liable for up to \$5 million annually in attorney fees under SB376.

SIGNIFICANT ISSUES

SB376 requires the Risk Management Division of GSD to annually increase the maximum recovery limit to the nearest multiple of \$10 thousand as reflected in the consumer price index. GSD notes:

An automatic inflationary adjustment independent of the legislative appropriation process may create future funding issues. A 2 percent annual adjustment over 10 years would increase the \$2,000,000 recovery limit by over \$400 thousand.

Data provided by New Mexico Counties shows that New Mexico's existing tort caps "per claimant" are higher than 30 other states and the "per occurrence" cap is greater than 26 other states.

The bill allows for the prevailing party to recover not only reasonable attorney's fees but also "reasonable litigation expenses," and it is unclear what is defined as a litigation expense. GSD states, if the provision is meant to include the costs of investigation, depositions, and expert witnesses, the additional cost could be substantial.

The UNM Health Sciences Center, insured by General Services Department, notes tht the cap increases would also significantly increase damages awarded for medical malpractice claims.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Bill 4, the New Mexico Civil Rights Act, which allows individuals who claim the deprivation of any rights, privileges, or immunities provided for in the New Mexico Constitution to bring a lawsuit in state court and recover damages.

Conflicts with House Bill 307, Law Enforcement Immunity Exceptions, which eliminates the waiver of immunity for the spoliation (destruction) of evidence by a law enforcement officer.

TECHNICAL ISSUES

GSD notes the retroactive appeals process for cases either pending judgement or on appeal is unclear and clarifying language may help agencies anticipate how those cases would be handled or reviewed.

Several agencies also noted the bill appears to have conflicting language regarding the change in the statute of limitations. GSD states:

The proposed revision adds language that appears to change the statute of limitation for ALL actions under the NMTCA from two years to three years, unless a longer statute of limitations is otherwise provided by state law. However, the proposed language does not

replace the language in 41-4-15 that asserts an action against a governmental entity or public employee must be commenced within two years after the date of the occurrence.

ADP/CJ/al