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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/09
 LAST UPDATED 2/08/09 HB _____

SPONSOR Harden

SHORT TITLE Space Flight Tort Claim Liability Immunity SB 37

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB200 and SB64
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 New Mexico Finance Authority (NMFA)
 General Services Department (GSD)

SUMMARY

Synopsis of Bill

Senate Bill 37 enacts the "Space Flight Liability and Immunity Act" the purpose of which is to permit the use of waivers and releases of liability for space flight entities that will exculpate them from inherent risks of space flight activities and their negligence.

The bill would generally grant civil immunity from liability to a "space flight entity" resulting from injury to a "space flight participant" as defined by 49 U.S.C. Section 70102. That section defines "space flight participant" as "an individual, who is not crew, carried within a launch vehicle or reentry vehicle."

The term "space flight entity" is defined to include any entity holding a license, permit, or authorization issued by the United States Federal Aviation Administration pursuant to the Federal Commercial Space Launch Amendments Act of 2004 and any manufacturer or supplier of components, services or vehicles that have been reviewed by the United States Federal Aviation Administration as part of issuing such a license, permit or authorization.

In order for immunity to attach, the participant must be informed of the risks of space flight as required by the Act and federal law and must have given voluntary consent to participate in space flight activities after having been informed of the risks. The participant must also have signed a “Warning and Acknowledgement” set forth in the Act in order for a space flight entity to invoke the immunity provided.

The bill prohibits a space flight participant, participant’s heirs, executors, assignees, next of kin, administrators, or any other person, etc. from bringing an action against a space flight entity for injury to a space flight participant.

Exceptions to the immunity granted by the bill include gross negligence, willful or wanton disregard for safety of the participant, or intentional injury.

Failure to comply the requirements concerning the warning statement provided in the Act shall prevent a space flight entity from invoking the privileges of immunity provided by the Act.

FISCAL IMPLICATIONS

The Risk Management Division (RMD) of the General Services Department (GSD) currently insures the New Mexico Space Port Authority, which in turn leases facilities to flight entities. As part of the lease, RMD requires certain levels of insurance from the flight entities. If this bill becomes law, those leases will have to be reviewed and perhaps amended to account for decreased liability.

SIGNIFICANT ISSUES

According to the Attorney General’s Office (AGO) the bill also confers immunity on manufacturers or suppliers of space flight vehicles and their components and service providers by including them within the definition of “space flight entity”. However, it is appears that their immunity only attaches if the space flight entity conducting space launch or re-entry activities complies with the terms of the act and provides the necessary warnings and obtains the required acknowledgement from a space flight participant.

The Administrative Office of the Courts (AOC) reports that the warning set out in Section 5(A) of the bill includes an acknowledgement that there is no liability for any injury that “results from the risks of the space flight activity...”. This may be read to refer only to injuries from activities that are particularly related to space flight, and that liability still exists for other injuries that common negligence in other, non-space flight activities, still exposes the spaceport operators to liability.

The Act does not address the issue of injury to person or property associated with falling debris in the event of an accident. In this Act, non-space flight participants do not appear to be exempted from liability. There could be a risk associated to the state from suits associated with falling debris. The Spaceport Authority acknowledges that Falling debris is intentionally not covered as this legislation is related to the spaceflight participants and not 3rd parties. The Federal Aviation Administration’s Office of the Associate Administrator for Commercial Space Transportation (FAA/AST) license requires the launch providers to carry insurance to cover potential 3rd party impacts. All insurance above this level is indemnified up to \$1.5 billion (1984 dollars) by the federal government.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed; and
- Percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

AOC reports that there may be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB200 “Disclosure of Spaceport Authority Info“ and SB64 “Rename Spaceport as "Spaceport America"”

TECHNICAL ISSUES

AOC notes that after Section 3 establishes civil immunity from liability, Section 4(C)(1) of the bill states that gross negligence and intentional misconduct may still lead to liability. Section 4(C)(1) in particular refers to “an act or omission that constitutes gross negligence evidencing willful or wanton disregard for the safety of a participant” in space flight activity. The difficulty of this choice of words is that negligence, whether or not it is gross or ordinary negligence, is unintentional conduct that, by definition, is not willful. Section 4(C)(2) seems to recognize as much by also accepting “intentional” conduct from the liability limitation.

OTHER SUBSTANTIVE ISSUES

This Act is modeled after other space liability immunity acts in other states such as Florida and Virginia.

ALTERNATIVES

An amendment that would address the technical issue would be to strike the words “willful or” from Section 4(C)(1).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not be competitive with other states and therefore may impact New Mexico’s ability to attract the commercial space industry, reduce the potential for job creation, tourism, and educational benefits.