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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/09
 SPONSOR Martinez, R LAST UPDATED 03/18/09 HB _____
 SHORT TITLE Land Grant Tort Liability Exclusions SB 59/aSJC/aHCPAC
 ANALYST Archuleta

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AG)
 General Services Department (GSD)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to Senate Bill 59 makes a technical correction inserting paragraph 1 of subsection A to the liability coverage section related to certain community land grants.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 59 strikes the remainder of line 11 after the semicolon and all of line 12 and line 13 through the semicolon. It also strikes Section 1 in its entirety. The striking of the language in effect removes the exclusion of the waiver of immunity of liability for community land grants.

Synopsis of Original Bill

Senate Bill 59 provides certain exclusions from the waiver of immunity of liability for community land grants governed as political subdivisions of the state; extending eligibility for liability coverage to community land grants governed as political subdivisions of the state. The

bill also proposes to allow land grants governed as political subdivisions of the state to apply to the Risk Management Division (RMD) of GSD for risk coverage in which immunity has not been waived under the Tort Claims Act.

SIGNIFICANT ISSUES

According to the AG, immunity for land grants governed as political subdivisions of the state is already provided by NMSA 1978, § 41-4-4(A) which exempts governmental entities and “public employees from liability. “Governmental entity” is defined as a “local public body” which includes “political subdivisions of the state.” See NMSA 1978, § 41-4-3(B). Nevertheless, pursuant to NMSA 1978, Section 41-4-6 to -12, this immunity is waived regarding motor vehicles, buildings, public parks, machinery, equipment, furnishings, airports, public utilities, medical facilities, health care providers, highways and streets and law enforcement officers, among other things. To the extent that a land grant runs any of these risks, this bill would exclude the land grant from the waiver of immunity. This bill adds community land grants governed as political subdivisions of the state to the list of excluded entities which already includes community ditches or acequias and associations created pursuant to the Sanitary Projects Act. In addition to the exclusion to the waiver of immunity, the bill allows land grants governed as political subdivisions of the state to apply to the Risk Management Division of the General Services Department for coverage of risks for which immunity has not been waived.

Lastly, the AG notes that this bill applies to land grants “governed as political subdivisions of the state.” Not all land grants are governed as political subdivisions of the state. In 2004, the New Mexico Legislature designated land grants covered by NMSA 1978, §§ 49-1-1 to -18 as political subdivisions of the state. Land grants covered by these provisions are, among other things, land grants confirmed by the Congress of the United States and governed by a Board of Trustees.

PERFORMANCE IMPLICATIONS

This may simply add to the number of claims processed by RMD with little to no impact on the agency performance.

ADMINISTRATIVE IMPLICATIONS

RMD may see an increase in the number of tort claims filed and establish premiums for insurance coverage from each individual land grant.

According to DFA, RMD will have to provide training to the community land grants on the application process as well as Section 41-1-6 through 41-4-12 NMSA. Each section reviews each area of liability that applies to community land grants.

TECHNICAL ISSUES

According to the AG, perhaps reference should be made to NMSA 1978 49-1-1 to 18 when referring to land grants governed as political subdivisions of the state. It is also unclear from the wording whether “and their public employees acting lawfully and within the scope of their duties” applies only to community ditches and acequias or both community ditches and acequias and land grants.

The AG further mentions that the statute allows acequias to apply to the Risk Management Division for coverage, NMSA 1978, Section 73-2-38.1, is contained within Chapter 73, Special Districts, while the statute allowing land grants to do the same is in the Tort Claims Act rather than Chapter 49, Land Grants.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to GSD, community land grants which are political subdivisions may obtain coverage from GSD/RMD and the public liability fund upon a finding by the director of RMD that (1) the risk is commercially uninsurable or insurable only at unreasonable cost; and (2) the community land grant which is a political subdivision has paid all insurance premiums and public liability fund assessments in a timely manner or has had good cause for failing to do so. NMSA Section 41-4-25(A)(1) and (2).

DA/svb:mt