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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/18/13

SPONSOR White LAST UPDATED \_\_\_\_\_ HB 49

SHORT TITLE Space Flight Informed Consent Liability SB \_\_\_\_\_

ANALYST Clark

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	\$1,000.0*	\$1,500.0*	Recurring	New Mexico Spaceport Fund

(Parenthesis ( ) Indicate Revenue Decreases)

\*This assumes retention of the Virgin Galactic lease and recruitment of one additional tenant in FY14 and additional operator activity in FY15. The estimate does not consider the value of revenue and job creation from other customers who might come to New Mexico with the legislation in place.

Duplicates SB63

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Spaceport Authority (NMSA)

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

This bill makes five substantive changes to Section 41-14-1 NMSA 1978.

First, the bill adds or modifies numerous definitions to the statute, including “crew”, “launch”, “launch vehicle”, “participant”, “participant injury”, “payload”, “reenter/reentry”, “reentry vehicle”, and “space flight activities.” Where definitions are modified, the bill replaces references to definitions under the applicable United States Code or other federal provisions with specific definitions.

Second, the bill significantly amends and modifies section 41-14-3(A) NMSA 1978 to limit liability for a space flight entity when a person signed the specified warning and agreement under the statute, with the identified exceptions.

Third, under 41-14-3(B)(1) NMSA 1978 the bill changes the liability exceptions to subsection A from the dual possibilities of gross negligence or willful/wanton disregard for safety to the singular instance of gross negligence evidencing willful/wanton disregard for safety.

Fourth, the bill further eliminates an actual or constructive knowledge of a dangerous condition liability exception previously found under 41-14-3(B)(2) NMSA 1978. In so doing, the bill retains and moves what previously had been contained in subsection three, the intentional injury of a participant liability exception, into subsection two.

Fifth, in accord with the other substantive changes made by the bill, the bill modifies the title and substance of what had previously been called the “Warning and Acknowledgement” into the revised “Agreement and Warning” under 41-14-4 NMSA 1978. Subsection 4 also adds specific procedural/form requirements that when complied with, render the new “Agreement and Warning” enforceable, not unconscionable, and not against public policy.

Finally, the bill eliminates the sunset provision found under Laws 2010, Chapter 8, Section 5, which would repeal the Space Flight Informed Consent Act effective July 1, 2018.

## **FISCAL IMPLICATIONS**

There will 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.

Although there is minimal direct fiscal impact to the general fund from this bill, there could potentially be savings, or cost avoidance with an expanded limitation on liability. There could also be an indirect impact to the state if space flight entities, tenants, and users of Spaceport America choose to locate or originate flights in other states that currently provide indemnification to suppliers and manufactures.

Although it is difficult to estimate the fiscal impact of not expanding protections under the Space Flight Informed Consent Act, the New Mexico Spaceport Authority (NMSA) reports that it may be reasonable to expect that Spaceport America’s primary tenant, Virgin Galactic, would have its supply chain efficiency reduced in the long term, resulting in higher than necessary operational costs and reduced job creation in the State of New Mexico. In addition, Virgin Galactic indicated that it will re-evaluate its presence at the spaceport and in New Mexico should the protections not be provided. Without an anchor tenant, the \$209 million publicly-financed Spaceport America and the New Mexico Spaceport Authority may not be economically self-sustaining in the near- or long-term.

Beyond affecting Virgin Galactic, the NMSA believes the same concerns will negatively impact our ability to attract other space flight entities, tenants, and users at Spaceport America. Three separate potential tenants at Spaceport America, XCOR Aerospace, Sierra Nevada Corporation, and Rocket Crafters, Inc., have all recently indicated an unwillingness to move to New Mexico and operate from Spaceport America absent this legislation.

The NMSA estimates that a growing, recurring revenue stream from additional customers valued initially as high as \$1 million per year from lease and user fees would be lost without these legislated protections for the commercial space industry. Combined with potential impacts of

Virgin Galactic reducing or terminating its presence in New Mexico, the total cost could exceed \$150 to \$250 million in revenues over 20 years.

If the NMSA is unable to attract additional tenants and manufacturers, the economic potential of Spaceport America to the state in terms of job creation, tourism enhancement, and industry development will be substantially reduced.

### **SIGNIFICANT ISSUES**

This bill modifies Section 41-14-1 NMSA 1978, Space Flight Informed Consent Act, being Laws 2010, Chapter 8, Section 2 relating to informed consent for commercial spaceflight in New Mexico, by improving protections for component manufacturers and suppliers to space flight entities that operate in New Mexico. Not having this legislation creates uncertainty with respect to insurance costs and availability of supply chain for operators and places New Mexico a competitive disadvantage to Virginia, Florida, Texas, Colorado, and other states having this type of legislation.

The bill recognizes the assumption of risk specific to the participant only and not liability regarding damage or injury to third parties, i.e. the uninvolved public, property, etc. The law is based on the legal framework established by the federal Commercial Space Launch Amendments Act (CSLAA) of 2004, and is similar to laws in other space states, such as Texas, Florida, Virginia, and Colorado. The Federal regulatory body responsible for spaceflight licensure is the Federal Aviation Administration Associate Administrator for Commercial Space Transportation (“FAA”). There is value to the State in supporting this bill which limits the ability of a participant or his or her heirs to seek claims against an operator or its supply chain for injury or death resulting from a flight licensed by the FAA. The protections do not apply in cases of gross negligence or failure of a participant to sign the consent/waiver form.

In general terms, this bill makes the following changes to the original legislation:

1. Changes the definitions so that the New Mexico law does not incorporate federal laws by reference, prohibited by Article 4 Section 18 of the New Mexico Constitution.
2. Extends to manufacturers and suppliers of components, services and spacecraft, the same protection that the operators and companies like Virgin Galactic have in law; that is they will not be liable to passengers for injury or death on a space flight unless they act intentionally or with gross negligence.
3. Clarifies that manufacturers and suppliers are not liable for acts of simple negligence.
4. Amends certain portions of present law that explain the limitations of liability of the space flight entity in the event of a space flight accident. This section leaves intact the liability for intentional acts or gross negligence.
5. Removes the sunset provision.

This bill broadens the scope of definitions in the original law to include not only FAA-licensed operators, but also manufacturers and suppliers of components, spacecraft, and launch/reentry services to the operators. This reflects the reality of the industry where in many cases the operator is also the manufacturer, whereby providing protections under only one definition still leads to exposure and undermines the intent of the original legislation. Additionally, even in cases where the operator is distinct and separate, situations are likely to arise where in or out of state suppliers may be unwilling to supply an operator that conducts activities in New Mexico

due to lack of protections. Lacking an adequate supply chain, operators may be forced to do business in a more friendly business environment.

This bill sets New Mexico on equal competitive footing with other states such as Texas, Florida, Virginia, and Colorado, which explicitly offer indemnification to suppliers and manufacturers, and builds a level of confidence that the entire supply chain of the new commercial spaceflight industry can grow and develop in New Mexico.

### **PERFORMANCE IMPLICATIONS**

The legislation will maintain New Mexico's leadership in commercial spaceflight and create economic and educational opportunities for New Mexicans. New Mexico's ability to attract and retain commercial spaceflight operating customers will be significantly impacted should this legislation not be passed, and this will impact the number of jobs the NMSA can create.

This bill may have an impact on the performance measures of the district courts in the areas of cases disposed of as a percent of cases filed and percent change in case filings by case type.

### **OTHER SUBSTANTIVE ISSUES**

This does not limit any liability regarding injury or property damage to non-participating third parties. Any injury to non-participants or damage to their property is not covered by this bill. In fact, the operator who is licensed by the FAA will be required to carry up to \$500 million in insurance for third party damage or injury as well as the FAA providing a \$1.5 billion dollar policy to ensure proper coverage for any incident.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

New Mexico's \$209 million investment in Spaceport America would be jeopardized.

New Mexico's leadership in commercial space may be impacted, which limits job creation, tourism, and education.

- a) NMSA and New Mexico will be at a competitive disadvantage to Texas, Virginia, Florida, and Colorado.
- b) NMSA and New Mexico will have difficulty attracting and retaining customers.

Future customers and jobs may be at risk. NMSA projections indicate nearly 2000 jobs will be created as a result of the spaceport and the commercial space industry within the first 5 years of operation. Over 1100 New Mexicans have been employed at Spaceport America to date.

The current "Space Flight Informed Consent Act" will remain in effect, leaving references mainly to federal sources, and continuing to allow two other exceptions for tort claims under the act: first either gross negligence or willful/wanton disregard for safety and second actual or constructive knowledge of a dangerous condition. The Warning and Acknowledgement statement would remain the same.