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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/15

SPONSOR Nunez LAST UPDATED \_\_\_\_\_ HB 424

SHORT TITLE Water Districts Tort Immunity SB \_\_\_\_\_

ANALYST A. Sánchez

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

|              | FY15 | FY16 | FY17 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> | NFI  | NFI  | NFI  |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB572

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General Office (AGO)
- State Personnel Office (SPO)
- New Mexico Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

House Bill 424 proposes to amend Section 41-4-1 NMSA 1978 (Tort Claims Act) adding irrigation and conservancy districts to the list of entities excluded from the waiver of immunity if they have authorized the use of their property to be used as a road for the general public provided that a written agreement exists between the state agency or governmental entity operating or maintaining the road and the state agency or governmental entity has agreed to assume the operation and maintenance of the portion of the road on the irrigation and conservancy district's property. The state agency or governmental entity operating or maintain the road will be subject to liability under the Tort Claims Act.

### SIGNIFICANT ISSUES

Section 41-4-4(A) NMSA 1978 provides that a governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by the NM Religious Freedom Restoration Act, Section 28-22-1 through 28-22-5 NMSA

1978 and by Sections 41-4-5 through 41-4-12 NMSA 1978. Section 41-4-11(A) NMSA 1978 grants a waiver from immunity for liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties during the construction and subsequent maintenance of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

According to SPO, The state will continue offering workman's compensation and disability insurance for those workers employed by the state.

NMDA provides the example of the Elephant Butte irrigation district (EBID), which would be excluded from the waiver of immunity when the public and other state or governmental entities use their roadways under HB424. Currently, EBID is indemnified from the Act for storage and diversion of water only. Therefore, SB 424 would provide immunity from activities such as public recreation on an irrigation or conservancy district's property (i.e., canals) and for roads used by state or other governmental entities such as counties.

### **PERFORMANCE IMPLICATIONS**

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
- Percent change in case filings by case type

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates SB572

### **OTHER SUBSTANTIVE ISSUES**

According to NMDA, the impetus for this bill is related to one of the chile processors in Hatch. The county road that went to the plant was very narrow. The county wanted to extend the road to make it wider so it would be safer and accommodate larger trucks and school buses. The only option was to widen the road to include an irrigation district maintenance road. However, the irrigation district cannot let the county make it a road because the irrigation district remains responsible for any accidents. The irrigation district is only covered by the Tort Claims Act if the road is used in the maintenance of its storage and delivery of water. HB424 would allow the irrigation district to enter into an agreement with the county to assume the responsibility of the road under the county's Tort Claims Act protection, upon agreement. This scenario occurs across the state and involves maintenance roads that belong to irrigation districts and conservancy districts in rural areas. These scenarios will continue to impact agricultural production and distribution until the Tort Claims Act can be changed to allow various governmental entities to work with irrigation and conservancy districts to remove the liability from said. In some cases, this type of agreement may help address ingress and egress issues that involve colonias (i.e., access to the colonias).