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SENATE BILL 95

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

PHILLIP J. MALOOF

AN ACT

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AMENDING A SECTION OF
THE TORT CLAIMS ACT; CLARIFYING TREATMENT OF CERTAIN JOINTLY
OPERATED GOVERNMENTAL FACILITIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-4-4 NMSA 1978 (being Laws 1976,
Chapter 58, Section 4, as amended) is amended to read:

"41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--
AUTHORIZING EXCEPTIONS.--

A. 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 Sections 41-4-5
through 41-4-12 NMSA 1978. Waiver of this immunity shall be
limited to and governed by the provisions of Sections 41-4-13
through 41-4-25 NMSA 1978.

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1 B. Unless an insurance carrier provides a defense, a
2 governmental entity shall provide a defense, including costs and
3 attorneys' fees, for any public employee when liability is
4 sought for:

5 (1) any tort alleged to have been committed by
6 the public employee while acting within the scope of his duty;
7 or

8 (2) any violation of property rights or any
9 rights, privileges or immunities secured by the constitution and
10 laws of the United States or the constitution and laws of New
11 Mexico when alleged to have been committed by the public
12 employee while acting within the scope of his duty.

13 C. A governmental entity shall pay any award for
14 punitive or exemplary damages awarded against a public employee
15 under the substantive law of a jurisdiction other than New
16 Mexico, including but not limited to other states, territories
17 and possessions and the United States of America, if the public
18 employee was acting within the scope of his duty.

19 D. A governmental entity shall pay any settlement or
20 any final judgment entered against a public employee for:

21 (1) any tort ~~[which]~~ that was committed by the
22 public employee while acting within the scope of his duty; or

23 (2) a violation of property rights or any
24 rights, privileges or immunities secured by the constitution and
25 laws of the United States or the constitution and laws of New

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1 Mexico [~~which~~] that occurred while the public employee was
2 acting within the scope of his duty.

3 E. A governmental entity shall have the right to
4 recover from a public employee the amount expended by the public
5 entity to provide a defense and pay a settlement agreed to by
6 the public employee or to pay a final judgment if it is shown
7 that, while acting within the scope of his duty, the public
8 employee acted fraudulently or with actual intentional malice
9 causing the bodily injury, wrongful death or property damage
10 resulting in the settlement or final judgment.

11 F. Nothing in Subsections B, C and D of this section
12 shall be construed as a waiver of the immunity from liability
13 granted by Subsection A of this section or as a waiver of the
14 state's immunity from suit in federal court under the eleventh
15 amendment to the United States constitution.

16 G. The duty to defend as provided in Subsection B of
17 this section shall continue after employment with the
18 governmental entity has been terminated if the occurrence for
19 which damages are sought happened while the public employee was
20 acting within the scope of duty while the public employee was in
21 the employ of the governmental entity.

22 H. The duty to pay any settlement or any final
23 judgment entered against a public employee as provided in this
24 section shall continue after employment with the governmental
25 entity has terminated if the occurrence for which liability has

1 FORTY-SECOND LEGISLATURE

2 SECOND SESSION, 1996

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6 JANUARY 22, 1996

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8 Mr. President:

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10 Your COMMITTEES' COMMITTEE, to whom has been referred

11
12 SENATE BILL 95

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14
15 has had it under consideration and finds same to be GERMANE, PURSUANT
16 TO SENATE EXECUTIVE MESSAGE NUMBER EIGHT, and thence referred to the
17 JUDICIARY COMMITTEE.

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19 Respectfully submitted,

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25 SENATOR MANNY M. ARAGON, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

S0095CC1

1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996
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6 January 29, 1996
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8 Mr. President:
9

10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE BILL 95
13

14 has had it under consideration and reports same with recommendation that
15 it DO PASS.
16

17
18 Respectfully submitted,
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22 _____
23 Janice D. Paster, Chairman
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Adopted _____ Not Adopted _____

(Chief Clerk)

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Carraro, Stefani cs, Tsosie, Vernon

Absent: None

S0095JU1

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**State of New Mexico
House of Representatives**

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

February 13, 1996

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom has
been referred**

SENATE BILL 95

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 18 For 0 Against

Yes: 18

Excused: None

Absent: None

S0095AF1

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