

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original x **Amendment**
Correction **Substitute**

Date February 3, 2014

Bill No: HB165-305 Feb 3

Sponsor: Rep. Terry H. McMillan

Reviewing Attorney General's Office

Short Irrigation District Roadway

Person Writing Sally Malavé

Title: Tort Liability

Phone: 827-6031 **Email** smalave@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Summary Synopsis: House Bill 165 amends Section 41-4-11 of the Tort Claims Act, NMSA 1978, §§ 41-4-1 et seq., relating to the waiver of immunity of public employees acting within the scope of their duties for liability from damages during the construction and subsequent maintenance of highways and streets. It excludes from that waiver of immunity all irrigation and conservancy districts and their public employees that authorize any part of their property to be used as a road available for use by the general public by a state agency or local public body if the irrigation or conservancy district has entered into a written agreement with the state agency or local public body operating or maintaining such a road that the state agency or local public body has agreed to assume the operation and maintenance of that portion of the district’s property used for such a road; provided that the state agency or local public body operating the road available for public use shall be subject to liability as provided in the Tort Claims Act.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL None to this office.

SIGNIFICANT LEGAL ISSUES HB 165 raises the question why under similar circumstances other special districts created by law are not specifically excluded from the waiver of immunity in the same manner irrigation and conservancy districts are excluded for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of their employees while acting within the scope of their duties.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL None to this office.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL None to this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION Companion to Senate Bill 100.

TECHNICAL ISSUES OR DRAFTING ERROR For clarity, it may read:

C. Except that all irrigation and conservancy districts and their public employees acting lawfully and within the scope of their duties that authorize any part of their property to be used as a road available to the general public shall be immune from liability for damages arising out of the operation and maintenance of such roads available for use by the general public if . . .

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Irrigation and conservancy districts and their employees would remain subject to liability for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of their employees while acting within the scope of their duties

AMENDMENTS NEEDED TO IMPROVE THIS BILL