



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
(803)734-3780 • RFA.SC.GOV/IMPACTS

This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number:	S. 0082	Introduced on January 12, 2021
Author:	Malloy	
Subject:	S.C. Tort Claims Act	
Requestor:	Senate Judiciary	
RFA Analyst(s):	Miller	
Impact Date:	January 26, 2021	

Fiscal Impact Summary

This bill would increase expenditures for state agencies and local entities due to the increases in losses paid for insured liability claims and associated insurance premiums for higher tort liability limits. State agencies and local entities purchase liability insurance through the Insurance Reserve Fund (IRF), a division of the State Fiscal Accountability Authority (SFAA), local associations, or private insurance companies. The expenditure impact of this bill is pending, contingent upon the completion of an actuarial analysis from SFAA and additional responses from local representatives.

Additionally, this bill will result in an increase in revenues for the IRF in the form of increased premium revenue to offset the increase in expenditures. The revenue impact of this bill is pending, contingent upon the completion of an actuarial analysis from SFAA

Also, General Fund insurance premium tax revenue and Other Funds insurance premium tax revenue for the South Carolina Forestry Commission, aid to fire districts, and aid to emergency medical services regional councils within the Department of Health and Environmental Control (DHEC) will increase by an undetermined amount for increases in private insurance liability premiums for entities purchasing insurance through the private sector.

Explanation of Fiscal Impact

Introduced on January 12, 2021

This amended bill increases the liability limits under the South Carolina Torts Claims Act to \$500,000 for a single person and \$1,000,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence. Additionally, this bill is amended to allow a party who makes an offer of judgment that is not accepted and the verdict is more favorable to the offeror than the offer was, pursuant to §15-35-400, to recover of any administrative, filing, or other court costs and 8 percent computed on the amount of the verdict or award, regardless of the liability limits.

Currently, the four liability limits under the South Carolina Torts Claims Act, in §15-78-120(a)(1) through (4), are as follows:

- \$300,000 for a single person for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence
- \$600,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence
- \$1,200,000 per person, for a single occurrence arising from an incident with a doctor or dentist, regardless of the number of agencies or subdivisions involved in the occurrence and
- \$1,200,000 total for a single occurrence arising from an incident with a doctor or dentist, regardless of the number of agencies or subdivisions involved in the occurrence.

This bill increases the limit per person of \$300,000 to \$500,000 and the total limit per occurrence from \$600,000 to \$1,000,000 and allows parties that make an offer of judgment to recover administrative costs or other court costs and 8 percent computed on the amount of the verdict or award, regardless of the liability limits.

As parties are not currently allowed to recover administrative costs under the South Carolina Tort Claims Act, there is no data to estimate the number of cases that may be impacted by the allowance of recovery of administrative costs. Therefore, Revenue and Fiscal Affairs (RFA) is unable to estimate the potential increase of expenditures for all agencies impacted the Tort Claims Act due to the allowance of a party to recover administrative or other court costs and 8 percent computed on the amount of the verdict or award, regardless of the liability limits when an offer of judgment is not accepted and the verdict exceeds the offer.

State Fiscal Accountability Authority. This bill will increase all state agencies' expenditures through an increase in premiums to cover the increased amount of losses paid for claims due to the increased limits. The Insurance Reserve Fund (IRF), a division of the State Fiscal Accountability Authority (SFAA), provides insurance coverage for these liabilities, among others. The IRF insures all state agencies, including the Medical University of South Carolina (MUSC). Counties, municipalities, political subdivisions, school districts, special purpose districts, and other governmental entities may also choose to purchase insurance from the IRF. IRF believes the general/tort liability, professional liability, commercial auto, and school bus liability policies will be most impacted by this bill. An actuarial analysis is being performed to determine the expenditure impact for these liability policies.

Commercial Auto is fully reinsured, therefore IRF anticipates the additional losses for claims brought under the commercial auto policy will be fully reimbursed by its reinsurer. However, the premium price for the reinsurance will increase and IRF is unsure of the potential increase. The estimated increase of commercial auto is calculated based on actuarial models and studies based on losses.

In addition, IRF will have an increase in expenditures to modify policy coverages for certain insureds from a limit of \$600,000 to \$1,000,000. Currently, IRF offers insurance policies with limits of \$600,000 or \$1,000,000. All agencies that currently have an insurance policy with a

limit of \$600,000 will have to change to a policy with a limit of \$1,000,000. The expenditure impact of this change in policy limit is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

It is anticipated that the increased premiums for all entities insured by the IRF will offset the anticipated increase in the losses paid by IRF. Therefore, there is no net impact to the IRF. All state agencies and the local entities who choose to purchase insurance with the IRF will pay an increase in premiums. The premiums are estimated in consultation with an actuary. The potential increase in expenditures to all agencies and local entities that purchase insurance with the IRF is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

State Revenue

This bill increases the liability limits under the South Carolina Torts Claims Act to \$500,000 for a single person and \$1,000,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence and applies an annual inflation to all liability limits in §15-78-120(a)(1) through (4).

As discussed above, state agencies and local entities who choose to purchase insurance with the IRF will pay an increase in premiums that will offset the increase in losses paid due to the increase in the liability limits. It is expected that the increase in premium revenue for the IRF will be offset by the increase in losses paid due to the increase in the liability limits. However, the revenue impact is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

Further, an increase in premiums would increase premium tax. The premium tax is 1.25 percent. Premium taxes are paid quarterly and are allocated as follows: 1 percent to the South Carolina Forestry Commission, 1 percent to the aid to fire district account within the State Treasury, 0.25 percent to the aid to emergency medical services regional councils within the Department of Health and Environmental Control (DHEC), and the remaining 97.75 percent to the General Fund. Premium taxes are paid quarterly. The first three payments, paid in June, September, and December of the current year, are estimated using the prior year's actual tax liability. The final payment is made in March of the following year and is the difference between the actual premium tax liability owed in that year and the prior payments made. Insurance companies may choose to pay more than their estimated quarterly payments to offset any anticipated increase in premium tax liability in the current year. RFA assumes no insurance company will choose to pay more than their estimated quarterly payments due to increased premiums from this bill. As the total increase to premiums is unknown, the increase to premium tax revenue is undetermined.

Local Expenditure

This bill increases the liability limits under the South Carolina Torts Claims Act to \$500,000 for a single person and \$1,000,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence and allows recovery of administrative costs in certain situations. The IRF offers liability coverage for school districts and school entities, counties and county entities, municipalities, and political subdivisions, including special purpose

districts. The expenditure impact to these local entities is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

In addition to the IRF, various state associations have established trusts to assist local entities with the purchase of insurance. The South Carolina School Boards Association provides the South Carolina Boards Insurance Trust (SCBIT), which provides the option for insurance coverage for school districts. The South Carolina Association of Counties (SCAC) provides the South Carolina Counties Property and Liability Trust (SCCP<), to offer insurance coverage to counties. The Municipal Association (MASC) provides the South Carolina Municipal Insurance and Risk Financing Fund (SMIRF). The expenditure impact to these local entities is pending, contingent upon additional responses from The South Carolina Schools Association, SCAC, and MASC.

The political subdivisions, including special purpose districts, within the state will also have an increase in premiums because of the increased liability limits. RFA previously contacted the special purpose district lobbyist to inquire about the impact to premiums for special purpose districts. The special purpose districts may purchase insurance from the IRF, one of the funds set up by an association discussed above, or through the private market. Based on previous responses, the special purpose districts who purchase insurance through the private market, will likely see a premium increase of approximately 13.5 to 20 percent due to the increase in the liability limits. The actual local expenditure impact for each special purpose district will depend upon the amount and type of coverage needed by that district.

Further, based on the information previously provided by the South Carolina Hospital Association, the hospitals in South Carolina, other than MUSC as a state entity, may purchase insurance from the Palmetto Health Trust or from the private market. The expenditure impact to these hospitals is pending, contingent upon additional response from the South Carolina Hospital Association.

Local Revenue

N/A



Frank A. Rainwater, Executive Director