



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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<b>Bill Number:</b>	S. 0007	Amended by Senate Judiciary on January 23, 2019
<b>Author:</b>	Malloy	
<b>Subject:</b>	S.C. Torts Claims Act	
<b>Requestor:</b>	Senate Judiciary	
<b>RFA Analyst(s):</b>	Miller	
<b>Impact Date:</b>	February 14, 2019	Updated for Revised Analysis and Fiscal Impact

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### **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, local associations, or private insurance companies.

State expenditures for liability insurance premiums through the IRF are expected to increase by a total of \$21,400,000 from either General Funds or Other Funds, depending upon each agency's funding structure. Further, local expenditures for entities insured through the IRF would increase by \$20,000,000. Expenditures for liability premiums for local entities not insured through the IRF, including school districts, counties, municipalities, special purpose districts, and local hospitals, may increase by as much as \$39,500,000 for those insured through associations plus an approximate 30 percent increase in premiums for those entities who purchase in the private sector. The timing of the expenditure impact for all entities will depend on the timing of the premium increases. Liability insurance premium expenditures for state agencies and local entities are expected to increase further in future years due to the inflation adjustments to the liability limits.

This bill would increase the IRF's Trust Fund expenditures for the increase in liability losses paid by an undetermined amount. The IRF's Trust Fund revenue to cover the additional losses would increase by \$41,400,000, \$21,400,000 from state agencies and \$20,000,000 from local entities, due to an increase in insurance premiums beginning in FY 2019-20. IRF anticipates being able to manage any increase in expenditures with the increased insurance premium revenue.

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.

This bill was amended to require Revenue and Fiscal Affairs to perform the calculation of the inflation adjustment to the liability limits and to provide the new liability limits to the State Register. This fiscal impact statement has been updated to clarify the expenditure impact after

the potential rate increase and to correct the funding source for the expenditures due to this bill. This fiscal impact statement has also been updated to include additional information from the IRF and responses from the Municipal Association, the South Carolina Hospital Association, representatives from the special purpose districts, the South Carolina School Board, and the Association of Counties.

## **Explanation of Fiscal Impact**

**Amended by Senate Judiciary on January 23, 2019**

**Updated for Revised Analysis and Fiscal Impact on February 14, 2019**

### **State Expenditure**

This amended bill increases the liability limits under the South Carolina Torts Claims Act to \$1,000,000 for a single person and \$2,000,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence. Additionally, all the limits in §15-78-120(a)(1) through (4) must be adjusted annually in accordance with the Consumer Price Index (CPI) for all Urban Consumers, South Region, published by the U. S. Department of Labor. This bill, as amended, requires the Revenue and Fiscal Affairs (RFA), Board of Economic Advisors (BEA) to calculate the applicable adjustment, and all limits must be adjusted accordingly beginning July 1, 2021, and provided to the State Register.

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 \$1,000,000 and the total limit per occurrence from \$600,000 to \$2,000,000. Also, all four liability limits in §15-78-120(a)(1) through (4) will be adjusted annually in accordance with CPI beginning in FY 2021-22.

**Revenue and Fiscal Affairs (RFA).** This bill, as amended, requires the BEA, a section of RFA, to calculate the inflation adjustment for all limits within §15-78-120(a)(1) through (4) and provide the calculations to the State Register. The additional calculations required by this amended bill can be managed by existing staff and within existing appropriations. Therefore, this requirement of the amended bill will have no impact on RFA.

**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. Based on an actuarial analysis, the IRF anticipates the increase in losses paid for claims brought against state agencies by insurance type will be:

- General/Tort: between \$11,700,000 and \$20,900,000
- Professional Liability: between \$1,700,000 and \$3,200,000
- School Bus: \$1,300,000
- Commercial Auto: net impact \$0

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, resulting in a net expenditure impact of \$0. Overall, the expenditure impact to the IRF may be as much as \$25,400,000 for the increase in losses paid across all liability policies impacted for state agencies. The estimated increase in losses is based upon historical data, specific loss data, and other relevant information to project potential risk of future loss. However, the actuarial analysis did not capture the potential impact that the modified limits would have on behavioral effects such as the potential increase in frequency of claims filed, potential increased time for negotiation, and the potential increased number of claims going to trial rather than settling in negotiation. Therefore, the actual impact of the modified liability limits may vary from the estimate.

One factor of the actuarial analysis is the historical data, which has been included in this fiscal analysis. This data is not separated into the claims subject to the various limits, therefore RFA is unable to determine which of the claims filed were subject to the \$300,000, \$600,000, and \$1,200,000 limitation or claims brought under the federal statutes. Additionally, the policies issued by the IRF are occurrence-based such that the amount of losses paid will tie back to the time period in which the actionable incident occurred. A claim may take many years to close in order to determine the amount of loss paid. Therefore, the more recent annual data is subject to revision as more claims close.

The tables below provide an average of 10 years of claims that have closed by type of liability coverage. These claims are separated by claims that have closed with a loss paid of greater than \$200,000 for a single person/single occurrence, and greater than \$400,000 for total/single occurrence. Additionally, the third table provides additional data for all claims filed under each type of liability policy.

<b>10 Year History Single Person/Single Occurrence 2009-2018</b>		
	<b>Number of Losses Paid Greater Than \$200,000</b>	<b>Total Losses Paid</b>
<b>Auto Liability</b>	74	\$19,546,157
<b>Professional Liability - Institution</b>	142	\$68,041,500
<b>Professional Liability - Physician</b>	73	\$23,377,000
<b>School Bus Liability</b>	19	\$5,289,100
<b>Torts Liability</b>	198	\$66,566,840

<b>10 Year History Total/Single Occurrence 2009-2018</b>		
	<b>Number of Losses Paid Greater Than \$400,000</b>	<b>Total Losses Paid</b>
<b>Auto Liability</b>	14	\$14,925,766
<b>Professional Liability - Institution</b>	80	\$50,365,500
<b>Professional Liability - Physician</b>	12	\$6,265,000
<b>School Bus Liability</b>	5	\$2,533,564
<b>Tort Liability</b>	72	\$42,377,861

<b>10 Year Average 2009-2018</b>				
	<b>Average Number of Claims Filed</b>	<b>Average Number of Losses Paid</b>	<b>Annual Average Amount Loss Paid</b>	<b>Average Loss Paid per Case</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4 (3 ÷ 2)</b>
<b>Auto Liability</b>	1,448	1,051	\$9,271,310	\$8,826
<b>Professional Liability - Institution</b>	117	29	\$7,856,290	\$269,976
<b>Professional Liability - Physician</b>	79	37	\$3,828,617	\$104,894
<b>School Bus Liability</b>	1,061	269	\$2,701,629	\$10,062
<b>Tort Liability</b>	3,260	1,988	\$20,772,414	\$10,452

The IRF has not provided an estimate for the increase in losses due to claims brought against any entity other than state agencies. The increase in expenditure for losses for actions brought against counties, school districts, municipalities, and special purpose districts is unknown. Therefore, the total increase of losses paid by the IRF is undetermined. However, it is anticipated that the increased premiums for all entities insured by the IRF will offset the anticipated increase in the losses paid. 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. Based upon an actuarial review of the impact of raising the liability limits, the IRF anticipates each state agency's insurance premium will increase per policy line by the following percentages:

- General Tort: between 15 percent and 31 percent
- Professional Liability: between 45 percent and 63 percent
- Commercial Auto: 34 percent
- School Bus: between 16 percent and 28 percent

The IRF anticipates the total increase in premiums across all state agencies will be \$21,400,000. This increase is in addition to an unrelated increase in premiums that will begin in FY 2019-20, as approved by the IRF Board on January 29, 2019. The impact to the General Fund and Other Funds of the state will depend upon the structure of each agency. Included in the \$21,400,000 is a \$7,000,000 expenditure impact to the Medical University of South Carolina (MUSC), the only state-owned hospital.

In summary, the increase in state expenditures will be \$21,400,000, total, for all state agencies, including a \$7,000,000 expenditure impact on MUSC, beginning in FY 2019-20, because of the increase in premiums paid to the IRF. The expenditure impact on the General Fund and Other Funds due to the increase in premiums for each state agency will depend upon the agency structure. There will be no net fiscal impact to the IRF as the premiums collected from its insured will offset the increase in losses paid due to the increase in the liability limits.

### **State Revenue**

This bill increases the liability limits under the South Carolina Torts Claims Act to \$1,000,000 for a single person and \$2,000,000 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. Based upon the actuarial analysis, IRF anticipates premiums collected from state agencies and local entities to increase by \$21,400,000 and \$20,000,000, respectively, for a total increase in collected premiums by IRF of \$41,400,000. 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.

Further, an increase in premiums would increase premium tax. The premium tax is one and one quarter percent. Premium taxes are paid quarterly and are allocated as follows: one percent to the South Carolina Forestry Commission, one percent to the aid to fire district account within the State Treasury, one-fourth of one percent to the aid to emergency medical services regional councils within the Department of Health and Environmental Control (DHEC), and the remaining ninety-seven and three-fourths 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 \$1,000,000 for a single person and \$2,000,000 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, the IRF anticipates increasing premiums for local entities by \$20,000,000 to offset the increase in losses paid due to the increase in the liability limits. This includes increases to the various local entities as follows:

- 49 school districts and school entities - \$800,000
- 95 counties and county entities - \$13,800,000
- 135 municipalities - \$2,600,000
- 358 special purpose districts – \$2,800,000

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. Fifty-four of the eighty-one school districts currently purchase insurance with the SCBIT. SCBIT had an actuarial analysis performed to determine the potential increase in losses paid from the fund due to the increase in liability limits. The analysis used historical data and other industry standards to determine the potential impact of this bill. The result of the analysis indicates the impact of the modified limits could range from \$3,000,000 to \$9,000,000, with the most likely impact being approximately \$6,000,000. If the SCBIT increases premiums to offset the increase in losses paid, this would result in an approximate 30 percent increase in premiums for each school district within the SCBIT. However, the association stated it hopes to be able to manage some of the losses with reserves within the fund. Additionally, the association hopes to implement any premium increases to the school districts over a period of time, as it anticipates the losses paid will not increase for a few years. This assumption is based on the fact that the claims brought under the modified liability limits may take a few years to close.

The South Carolina Association of Counties (SCAC) provides the South Carolina Counties Property and Liability Trust (SCCP&LT), to offer insurance coverage to counties. There are twenty-four participants, including counties and county entities, who currently purchase insurance with the SCCP&LT. The SCCP&LT anticipates a minimum increase of \$2,600,000 to premiums for its participants to offset the cost of losses paid, beginning in FY 2019-20. The increase is based on historical claims and does not take into account other factors such as increased frequency of claims. Because of this, SCCP&LT believes that the \$2,600,000 may understate the expenditure impact to its participants.

The Municipal Association provides the South Carolina Municipal Insurance and Risk Financing Fund (SMIRF). Of the 271 municipalities in the state, 122 purchase insurance with SMIRF. SMIRF anticipates raising premiums a minimum of 9.5 percent, or \$1,900,000, across all 122 municipalities to offset the increase in expenditures to SMIRF. The impact to each municipality will vary depending on the size and amount of coverage required. The Municipal Association provided an estimated impact for Ninety-Six, Moncks Corner, and Anderson, which represent a small, medium, and large municipality in the state. The increase in insurance premiums for each of the mentioned municipalities would be \$1,153, \$8,673, and \$68,453, respectively, beginning in FY 2019-20. This would only reflect the immediate insurance increase. Based on an actuarial estimate, the total losses paid may increase by as much as 12 to 55 percent. This estimate is based on historical data and comparable data from around the country. SMIRF will raise premiums by 9.5 percent only to cover the immediate costs and may raise premiums as much as an additional 45.5 percent, or \$9,000,000, to cover the potential total 55 percent, or \$10,900,000, increase in losses paid due to the modified liability limits.

The special purpose districts within the state will also have an increase in premiums because of the increased liability limits. RFA contacted the special purpose district lobbyist to inquire about the impact to premiums for special purpose districts specifically for the private market. 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. The premium increase for special purpose districts that purchase insurance from the IRF will be \$2,800,000. Special purpose districts that purchase from a local association's fund is included in the totals above. The remaining special purpose districts, who purchase insurance through the private market, will likely see a premium increase of approximately 30 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 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. Based on an estimate by a private insurer, premiums for hospitals due to the modified liability limits will increase by 30 percent or more. The expenditure impact to each hospital will depend on current insurance coverage premiums. The table below summarizes the expenditure impact to local entities.

	<b>IRF</b>	<b>Local Associations*</b>	<b>Private</b>	<b>Total</b>
<b>School Districts</b>	\$800,000	\$6,000,000	30% increase above current	\$6,800,000 + Private Sector
<b>Counties</b>	\$13,800,000	\$2,600,000	30% increase above current	\$16,400,000 + Private Sector
<b>Municipalities</b>	\$2,600,000	\$10,900,000	30% increase above current	\$13,500,000 + Private Sector

*(continued on next page)*

	<b>IRF</b>	<b>Local Associations*</b>	<b>Private</b>	<b>Total</b>
<b>Special Purpose Districts</b>	\$2,800,000	Included Above	30% increase above current	\$2,800,000 + Private Sector
<b>Non-State Hospitals</b>	N/A	N/A	30% increase above current	Private Sector
<b>TOTAL</b>	\$20,000,000	\$19,500,000	30% increase above current	\$39,500,000 + Private Sector

*\*Local Associations include the South Carolina School Boards Association, the South Carolina Association of Counties, and the South Carolina Municipal Association.*

In summary, the potential impact to local entities may be as much as \$39,500,000 plus the increase in premiums for those entities who purchase in the private sector, and will depend on the timing of the premium increases.

### **Local Revenue**

N/A

### **Introduced on January 8, 2019**

#### **State Expenditure**

This bill increases the limits of liability under the South Carolina Torts Claims Act to \$1,000,000 for a loss for one person and \$2,000,000 total. Both apply to a single occurrence regardless of the number of agencies or subdivisions involved. Additionally, these limits must be adjusted annually in accordance with the Consumer Price Index for all Urban Consumers, South Region, published by the U. S. Department of Labor.

Currently, the limits of liability under the South Carolina Torts Claims Act are \$300,000 for a loss for one person, and \$600,000 total. Both limits applying to a single occurrence regardless of the number of agencies or subdivisions involved, and \$1,200,000 limit for an occurrence arising from an incident with a doctor or dentist. This bill increases the \$300,000 limit to \$1,000,000 and the \$600,000 limit to \$2,000,000.

The Insurance Reserve Fund (IRF), a division of the State Fiscal Accountability Authority (SFAA), provides insurance coverage to cover these liabilities, among others. All state agencies are required to purchase insurance coverage from the IRF. The IRF also provides insurance to some counties, municipalities, political subdivisions, and other governmental entities. The premiums charged by IRF are set in consultation with an actuary.

This bill would cause an increase in General Fund expenditures for all state agencies due to an increase in cost of premiums to offset the increased liability coverage. The IRF consulted with its actuary and estimated the impact for the following premiums to be:

- General Tort: between 15 percent and 31 percent
- Professional Liability: between 45 percent and 63 percent
- Commercial Auto: 34 percent
- School Bus: between 16 percent and 28 percent

IRF anticipates the impact of this bill in compilation with a potential rate increase, which will be considered on January 29, 2019, would increase total premiums collected from state entities by \$21,400,000. Therefore, this bill would increase General Fund expenditures by \$21,400,000 beginning in FY 2019-20.

Additionally, this bill would cause an increase in expenditures from IRF’s Trust Fund to cover an increase in the amount of loss paid for claims due to the increase in the limit of liability. IRF tracks the number of claims filed under each type of liability insurance and the amount of loss paid per claim. This data is not separated into the claims subject to the various limits, therefore RFA is unable to determine which of the claims filed were subject to the \$300,000 limitation, \$600,000 limitation, and \$1,200,000 limitation or claims brought under the Federal Statutes. Additionally, the policies issued by the IRF are occurrence based such that the amount of loss paid will tie back to the time period in which the actionable incident occurred. A claim may take many years to close in order to determine the amount of loss paid. Therefore, the more recent annual data is subject to being updated as more claims close.

The tables below lists all claims by type of liability coverage that will be impacted, since 2009 that has closed with a loss paid of greater than \$200,000 for a single person, single occurrence and greater than \$400,000, for more than one person, for a single occurrence. Additionally, please see the third table for additional data for all claims filed under each type of liability policy.

<b>10 Year History 2009-2018</b>		
	<b>Number of Losses Paid Greater Than \$200,000 1 person/1 Incident</b>	<b>Total Losses Paid</b>
<b>Auto Liability</b>	74	\$19,546,157
<b>Professional Liability - Institution</b>	142	\$68,041,500
<b>Professional Liability - Physician</b>	73	\$23,377,000
<b>School Bus Liability</b>	19	\$5,289,100
<b>Torts Liability</b>	198	\$66,566,840

<b>10 Year History 2009-2018</b>		
	<b>Number of Losses Paid Greater Than \$400,000 &gt;1person/1 Incident</b>	<b>Total Losses Paid</b>
<b>Auto Liability</b>	14	\$14,925,766
<b>Professional Liability - Institution</b>	80	\$50,365,500
<b>Professional Liability - Physician</b>	12	\$6,265,000
<b>School Bus Liability</b>	5	\$2,533,564
<b>Tort Liability</b>	72	\$42,377,861

<b>10 Year Average 2009-2018</b>				
	<b>Average Number of Claims Filed</b>	<b>Average Number of Losses Paid</b>	<b>Annual Average Amount Loss Paid</b>	<b>Average Loss Paid per Case</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4 (3 ÷ 2)</b>
<b>Auto Liability</b>	1,448	1,051	\$9,271,310	\$8,826
<b>Professional Liability - Institution</b>	117	29	\$7,856,290	\$269,976
<b>Professional Liability - Physician</b>	79	37	\$3,828,617	\$104,894
<b>School Bus Liability</b>	1,061	269	\$2,701,629	\$10,062
<b>Tort Liability</b>	3,260	1,988	\$20,772,414	\$10,452

The IRF does not rely solely on historical data to estimate the potential impact of future amounts of loss paid. Instead, the actuary uses specific loss data, trend information, and other relevant information to project the risk of future amounts of loss paid and the corresponding increase to premiums to cover this risk. For this bill, the actuary is unable to determine the impact that the modified limits would have on behavioral effects, such as frequency of claims and propensity of claimants to go to trial rather than negotiate. Therefore, the impact to IRF's Trust Fund expenditures is undetermined, beginning in FY 2019-20.

### **State Revenue**

This bill would increase revenue for IRF's Trust Fund due to the increase in policy premiums. The increase would correspond to the increase in state and local expenditures to pay for the increased premiums and would be offset by the increase in losses paid due to the higher limits of liability specified in the bill. IRF anticipates the impact of this bill in compilation with a potential rate increase, which will be considered on January 29, 2019, would increase total premiums collected by \$40,400,000. Therefore, this bill would increase revenues for the IRF's Trust Fund by \$40,400,000 beginning in FY 2019-20.

### **Local Expenditure**

This bill increases the limits of liability under the South Carolina Torts Claims Act from \$200,000 to \$1,000,000 for a loss for one person and from \$600,000 to \$2,000,000 total, both limits correspond to incidents arising from a single occurrence regardless of the number of agencies or subdivisions involved. Additionally, these limits must be adjusted annually in accordance with the Consumer Price Index for all Urban Consumers, South Region, published by the U. S. Department of Labor.

Those counties, municipalities, and political subdivisions that opt to purchase insurance coverage from the IRF will experience an increase to premiums due to the increased limits of liability. The IRF consulted with its actuary and estimated the impact to premiums due to the increase in the limits of liability to be as follows:

- General Tort: between 15 percent and 31 percent
- Professional Liability: between 45 percent and 63 percent

- Commercial Auto: 34 percent
- School Bus: between 16 percent and 28 percent

IRF anticipates the impact of this bill in compilation with a potential rate increase, which will be considered on January 29, 2019, would increase total premiums collected from local entities by \$19,000,000. Therefore, this bill would increase local expenditures by \$19,000,000 statewide, beginning in FY 2019-20.

**Local Revenue**

N/A



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Frank A. Rainwater, Executive Director