



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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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:	H. 4048	Amended by the House of Representatives on April 6, 2022
Author:	G. M. Smith	
Subject:	Duty to Defend and Indemnify	
Requestor:	Senate Judiciary	
RFA Analyst(s):	Miller	
Impact Date:	April 25, 2022	

Fiscal Impact Summary

This bill establishes the State's duty, by and through its agencies, departments, and instrumentalities, to defend and indemnify these state entities and the entities' officers and management employees against any uninsured claim or suit that arises out of the performance of official duties. This bill also repeals the separate indemnity clauses for the Department of Revenue (DOR) and State Fiscal Accountability Authority (SFAA) and eliminates the potential redundancy of coverage as both agencies will be granted defense and indemnity as state agencies under this bill.

This bill will have an undetermined expenditure impact for state agencies, departments, and instrumentalities, depending upon the implementation of the coverage of these uninsured claims and the number and size of claims and lawsuits that fall outside of the scope of current liability coverage.

Explanation of Fiscal Impact

Amended by the House of Representatives on April 6, 2022

State Expenditure

This bill establishes the State's duty, by and through its agencies, departments, and instrumentalities, to defend and indemnify these state entities and the entities' officers and management employees against any uninsured claim or suit that arises out of the performance of official duties. This bill also repeals the separate indemnity clauses for DOR and SFAA. This repeal eliminates the redundancy of coverage as both agencies will be granted defense and indemnity as state agencies under this bill.

Currently, state agencies are covered under the Torts Claims Act, pursuant to Chapter 78 of Title 15, with liability limits of \$300,000 for one person for a single occurrence and \$600,000 for a single occurrence, regardless of the number of persons involved. This bill expands the state's duty to defend and indemnify to include any uninsured claims.

The expenditure impact will depend upon the implementation of this duty to defend and indemnify and whether each agency is responsible for its own defense and damages or if one state agency, such as SFAA or the Attorney General Office, is held responsible to defend and

indemnify these uninsured actions. Additionally, the impact depends upon the number and size of claims and lawsuits that fall outside of the scope of current liability coverage. Therefore, this bill will have an undetermined expenditure impact.

State Revenue

N/A

Local Expenditure

N/A

Local Revenue

N/A

Amended by House Ways and Means on March 31, 2022

State Expenditure

This bill establishes the State's duty, by and through the IRF, within SFAA, to defend and indemnify all state agencies, departments, and other such entities and employees. This bill also repeals the separate indemnity clauses for DOR and SFAA. This repeal eliminates the redundancy of coverage as both agencies will be granted defense and indemnity as state agencies under this bill.

Currently, the IRF operates as a governmental insurance operation with the mission to provide insurance specifically designed to meet the needs of governmental entities. The IRF is authorized by statute to provide tort liability insurance, automobile liability insurance, and insure public buildings and content, among other insurance coverage.

SFAA indicates this bill will increase the scope of responsibility for the IRF beyond the current scope of insurance coverage to include the duty to defend and indemnify a state agency even if the claim arises under a cause of action that is not covered within the IRF's current insurance coverage. SFAA is unable to estimate the number or size of claims and lawsuits that will become the IRF's responsibility to defend and indemnify due to this bill. Therefore, this bill may have an undetermined expenditure impact for SFAA, depending upon the number and size of claims and lawsuits that fall outside of the scope of current insurance coverage. Additionally, RFA anticipates this may result in an increase in premiums for state agencies to cover the cost of these responsibilities.

State Revenue

N/A

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director