



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 House Ways and Means on March 31, 2022
Author: G. M. Smith
Subject: Duty to Defend and Indemnify
Requestor: House of Representatives
RFA Analyst(s): Miller
Impact Date: April 5, 2022

Fiscal Impact Summary

This bill establishes the State's duty, by and through the Insurance Reserve Fund (IRF), within the State Fiscal Accountability Authority (SFAA), to defend and indemnify all state agencies, departments, and other such entities and employees. This bill also repeals the separate indemnity clauses for the Department of Revenue (DOR) and SFAA and eliminates the potential 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. This bill expands the scope of the IRF's function beyond current practice 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 insurance coverage. SFAA indicates this bill will have an undetermined expenditure impact for the IRF, depending upon the number and size of claims and lawsuits the IRF is responsible for defending and indemnifying that fall outside the scope of current insurance coverage. RFA anticipates this bill may result in an increase in premiums for state agencies to cover the cost of these responsibilities.

Explanation of Fiscal Impact

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