



**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.*

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**Bill Number:** S. 0087      Introduced on January 10, 2023  
**Author:** Malloy  
**Subject:** Liability Limitations  
**Requestor:** Senate Judiciary  
**RFA Analyst(s):** Miller  
**Impact Date:** April 13, 2023

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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 (SFAA), local associations, or private insurance companies.

State expenditures for liability insurance premiums through the IRF are expected to increase by a total of \$17,085,000 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 \$11,668,000. Additionally, the expenditures for liability premiums for the 130 municipalities covered through the Municipal Association of South Carolina are expected to increase by \$2,000,000. Additionally, all other local entities will likely experience an increase in premiums up to 14 percent. 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 approximately \$28,753,000. The IRF's Trust Fund revenue to cover the additional losses would increase by \$28,753,000, which consists of \$17,085,000 from state agencies and \$11,668,000 from local entities, due to an increase in insurance premiums beginning in FY 2023-24. The IRF anticipates being able to manage any increase in expenditures with the increased insurance premium revenue.

Additionally, this bill as amended will have an undetermined expenditure impact to all agencies due to the allowance of a party who makes an offer of judgment, pursuant to §15-35-400(A), that is not accepted, to recover from the offeree, pursuant to §15-25-400(B), any administrative, filing, or other court costs and 8 percent interest computed on the amount of the verdict or award from the date of the offer, regardless of the liability limits.

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 subject to the increased liability limitations who purchase insurance through the private sector.

## **Explanation of Fiscal Impact**

### **Introduced on January 10, 2023**

#### **State 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. Additionally, this bill allows a party who makes an offer of judgment that is not accepted, pursuant to §15-35-400, to recover of any administrative, filing, or other court costs and 8 percent interest computed on the amount of the verdict or award from the date of the offer, 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 from \$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 interest computed on the amount of the verdict or award, regardless of the liability limits, even if the recovery is above the newly increased limits.

As parties are not currently allowed to recover administrative costs under the South Carolina Tort Claims Act, there are 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 by the Tort Claims Act from allowing a party to recover administrative or other court costs and 8 percent interest 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.

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 IRF, a division of 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. The 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 was performed to determine the expenditure impact for these liability policies. Based on the actuarial analysis, the IRF anticipates the increase in losses paid for claims brought against governmental entities to total \$17,470,000.

The following is the increase in loss by insurance type:

- General/Tort: \$9,835,000
- Professional Medical Liability: \$3,561,000
- Commercial Auto: \$3,439,000
- School Bus: \$635,000

Commercial Auto is fully reinsured, therefore the 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 the IRF is unsure of the amount of the potential increase. The estimated increase of commercial auto is calculated based on actuarial models and studies based on losses. Therefore, the expenditure impact for the commercial auto may be different than the actuarial analysis due to reinsurance.

In addition to the total \$17,470,000 increase due to the amended tort liability limits, the 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, the 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 IRF estimates switching all insureds from a \$600,000 policy to a \$1,000,000 policy will result in an increase of expenditures by \$11,283,000. The following is the increase in premiums for the policy shift from \$600,000 to \$1,000,000:

- General/Tort: \$4,115,000
- Professional Medical Liability: \$2,154,000
- Commercial Auto: \$4,446,000
- School Bus: \$568,000

Overall, the expenditure impact to the IRF may be as much as \$28,753,000 for the increase in losses paid across all liability policies impacted. The following is the total increase in premiums by insurance type:

- General/Tort: \$13,950,000
- Professional Medical Liability: \$5,715,000
- Commercial Auto: \$7,885,000
- School Bus: \$1,203,000

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. Additionally, this estimate does not include the potential impact of the allowance for recovery of any administrative, filing, or other court costs and 8 percent interest computed on the amount of the verdict or award from the date of the offer, regardless of the liability limits.

It is anticipated that the increased premiums for all entities insured by the IRF will offset the anticipated increase in the losses paid by the 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. 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: 13 percent for amended tort limits plus 6 percent for change in policy coverage limits.
- Professional Medical Liability: 12 percent for amended tort limits plus 8 percent for change in policy coverage limits.
- Commercial Auto: 14 percent for the amended tort limits plus 7 percent for change in policy coverage limits.
- School Bus: 12 percent for amended tort limits plus 12.0 percent for change in policy coverage limits.

The IRF anticipates the total increase in premiums will total \$28,753,000, which consists of \$17,085,000 for all state agencies and \$11,668,000 for all local entities covered by the IRF. The increase in premiums for all state agencies will be \$17,085,000, which consists of \$11,006,000 due to the increase in tort limit liability, and \$6,079,000 for the increase in policy coverage limits. The impact to the General Fund and Other Funds will depend upon the structure of each agency. Included in the \$17,085,000 is a \$3,135,000 expenditure impact to the Medical University of South Carolina (MUSC), the only state-owned hospital.

In summary, the IRF anticipates the increase in costs will total \$28,753,000, which consists of \$17,085,000 for all state agencies and \$11,668,000 for all local entities covered by the IRF. The increase in state expenditures will be \$17,085,000, total, for all state agencies, including a \$3,135,000 expenditure impact on MUSC, beginning in FY 2023-24, 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's funding structure. There will be no net fiscal impact to the IRF, as the premiums collected from its insureds 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 \$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. The IRF anticipates premiums collected from state agencies and local entities to increase by \$17,085,000 and \$11,668,000, respectively, for a total increase in collected premiums by the IRF of \$28,753,000. 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, this bill will increase premiums for those entities that purchase insurance through the private sector. An increase in premiums would increase premium tax revenue. 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. 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.

As discussed above, the total increase of local entities premiums is estimated at \$11,668,000. The increase is a combination of an increase to cover the increased liability limits of \$6,465,000 and an increase to cover the change in the policy coverage limits of \$5,204,000. The IRF provides insurance coverage for the following local entities:

- 15 school districts and school entities,
- 91 counties and county entities,
- 119 municipalities and municipal entities, and
- 331 political subdivisions, including special purpose districts.

The table below provides the anticipated increase in premiums for local entities covered by the IRF.

	<b>Increase Tort Liability Limits</b>	<b>Policy Coverage Limit Update</b>	<b>Total Premium Increase</b>
<b>School Districts</b>	\$410,000	\$151,000	\$561,000
<b>Counties</b>	\$3,948,000	\$2,665,000	\$6,613,000
<b>Municipalities</b>	\$1,341,000	\$867,000	\$2,208,000
<b>Political Subdivisions</b>	\$1,708,000	\$578,000	\$2,286,000
<b>Total</b>	\$7,407,000	\$4,261,000	\$11,668,000

In addition to the IRF, various state associations have established trusts to assist local entities with the purchase of insurance. Based on 2020 data, the South Carolina School Boards Association provides the South Carolina Boards Insurance Trust (SCBIT), which provides the

option for insurance coverage for school districts. Of the 81 school districts, 54 purchased insurance with the SCBIT as of 2020. Based on the increase in premiums to school districts purchasing insurance through the IRF, we estimate the impact to all other school districts may range from 9 to 14 percent.

The South Carolina Association of Counties (SCAC) provides the South Carolina Counties Property and Liability Trust (SCCP&LT), to offer insurance coverage to counties. Based 2020 data, there were 24 participants, including counties and county entities, who currently purchase insurance with the SCCP&LT. The SCCP&LT anticipated a minimum increase of \$1,060,000 to premiums for its participants to offset the cost of losses paid. The increase is based on historical claims and does not consider other factors such as increased frequency of claims. Because of this, SCCP&LT believes that the \$1,060,000 may understate the expenditure impact to its participants. RFA will update this section of the fiscal impact statement when SCAC provides updated information.

The Municipal Association of South Carolina (MASC) provides the South Carolina Municipal Insurance and Risk Financing Fund (SCMIRF). Of the 271 municipalities in the state, 130 purchase insurance with SCMIRF. SCMIRF anticipated raising premiums a minimum of 14 percent, or \$2,000,000, across all 130 municipalities to offset the increase in expenditures to SCMIRF. The impact to each municipality will vary depending on the size and amount of coverage required. This estimate, provided by SCMIRF's actuary, AON, is based on historical data and comparable data from around the country. SCMIRF will raise premiums by 14 percent only to cover the immediate costs. Additionally, MASC noted that overall net premiums have already increased by 66 percent, or \$13,000,000 due to increased claims costs and reinsurance expenses. Any increase in the tort caps will result in further increases to the overall premium rates increase. Further, MASC stated that allowing an offeree to recover an 8 percent interest in on the amount of the verdict, if any offer of judgment is not accepted may result in offers being made without a good faith effort in settling claims and may inflate the settlement value and provide uncertainty on the final settlement value of a case. Depending on the number of cases where this occurs, premiums may need to be increased above the currently projected 14 percent.

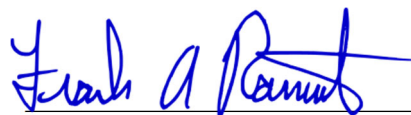
The political subdivisions, including special purpose districts, within the state will also have an increase in premiums because of the increased liability limits. The special purpose districts may purchase insurance from the IRF, one of the funds set up by an association discussed above, or through the private market. Special purpose districts that purchase from the IRF or a local association's fund are 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 9 to 14 percent due to the increase in the liability limits, if the private market follows the same trends as projected for the IRF. The actual local expenditure impact for each special purpose district will depend upon the amount and type of coverage needed by that district.

Further, local 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 the analysis provided by SFAA, premiums for hospitals due to the modified liability limits will increase by

15 to 29 percent. The expenditure impact to each local hospital will depend on current insurance coverage premiums.

**Local Revenue**

N/A



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