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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/14
SPONSOR Kane **LAST UPDATED** _____ **HM** 87

SHORT TITLE Disability Compliance of Emergency Plan **SB** _____

ANALYST Armstrong

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	Minimal		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Governor’s Commission on Disability (GCD)

Indian Affairs Department (IAD)

Homeland Security and Emergency Management Department (HSEMD)

SUMMARY

Synopsis of Bill

House Memorial 87 requests that the GCD form a task force to ensure that New Mexico’s 2014 all hazard emergency operations plan complies with Title II of the federal Americans with Disability Act and to identify barriers to compliance or deficiencies in the plan. The task force would include representatives from HSEMD, the Department of Public Safety, the Vocational Rehabilitation Division of the Public Education Department, the Bureau of Health Emergency Management of the Department of Health, the Aging and Long-Term Services Department, IAD, the GCD, the Developmental Disabilities Planning Council, the Commission for Deaf and Hard-of-Hearing Persons, the Commission for the Blind, the Public Regulation Commission, the state fire marshal, the Office of the State Engineer, at least two rural counties and one class A county, and at least two tribes or pueblos.

FISCAL IMPLICATIONS

The memorial does not include an appropriation. Costs associated with forming the task force and carrying out the memorial’s other requests would be absorbed by existing resources. HSEMD analysis states that the department will require a minimum of one staff member fully

assigned to this task for 3-4 months to carry out the research and participate in the required meetings.

SIGNIFICANT ISSUES

Federal regulations, made final on September 15, 2010, implementing Title II of the Americans with Disabilities Act of 1990 provide that no person with a disability shall be excluded from participation in or be denied benefits of the services, programs, or activities of a public entity or be subjected to discrimination by a public entity. Under these federal regulations, a “public entity” includes a state or local government or department, agency, special purpose district, or other instrumentality of a state, states, or local government. According to federal guidance, states, and local governments must comply with Title II of the Americans with Disabilities Act of 1990 in their emergency and disaster-related programs.

The most current version of New Mexico’s All Hazard Emergency Operations Plan posted on the HSEMD website is dated 2007, which date is before the Americans with Disabilities Act of 1990 amendments which require states and local governments to comply with Title II of the act in the emergency and disaster-related programs. The 2007 plan established the New Mexico emergency operations system that organizes the state’s response to emergencies and disasters while providing for the safety and welfare of its residents, establishing lines of authority, responsibilities and organizational relationships and formalizing how actions will be coordinated among state, federal, and local governments. The 2007 plan outlines specific procedures that reflect operational priorities, including life, safety, health, environmental protection, restoration of essential utilities, restoration of essential functions and coordination among all levels of government.

Additionally, the 2007 plan establishes nine planning areas for evacuations and mass care, and as of 2007, these nine planning areas contained the following populations of persons over the age of five years with disabilities: middle Rio Grande valley/greater Albuquerque metro planning area; north central mountains planning area; four corners planning area; west central planning area; lower Rio Grande valley and southwest planning area; south central mountains planning area; southeast planning area; eastern plains planning area; and northeast highlands and plains planning area. According to the 2007 plan, local government provides for the evacuation of threatened or affected segments of the population in an emergency or disaster within its jurisdiction and capabilities. The decision to evacuate or shelter in place is made after initial evaluation by local officials and in rare circumstances by the governor, by invoking the Riot Control Act or martial law, but there are no legal means for a mayor or county executive to order a mandatory evacuation. NM’s 2007 plan was revised in 2009. A revised 2014 plan is awaiting signature.

Title II of the ADA requires that people with disabilities be protected from discrimination on the basis of disability, including the safe evacuation from all government buildings. According to GCD, it is unclear if all state owned and leased buildings meet accessibility standards under the ADA. The task force requested by HM 87 would review the state's 2014 all hazard emergency operations plan to ensure that the State of New Mexico complies with federal law, i.e., Title II of the ADA. Additionally, the task force will review current evacuation plans of emergency and disaster-related programs to develop specific procedures that reflect operational priorities and coordination among all levels of government to achieve compliance.

HSEMD Analysis

The case law cited in HM 87 mentions the City of New York; however, HM 87 only discusses the need to review and make recommendations for the State Emergency Operations Plan (EOP). The important point to focus on regarding the referred New York case is the result of a complaint filed against New York City claiming that the city is in noncompliance with the ADA. Per the National Incident Management System (NIMS) and the Incident Command System (ICS), the affected city or county has primary responsibility to assist its residents with evacuation and sheltering. If the Memorial passes, DHSEM recommends the committee also review city and county EOPs and make recommendations concerning compliance with the law. This will ensure that the State EOP and the cities' and counties' EOPs are in alignment on how to handle evacuations and mass care issues. Reviewing the State EOP and all the city and county EOPs may require more time than the current Memorial allows.

The committee will also need to recommend how to assist people with disabilities concerning evacuations and sheltering as there is no current means to identify everyone who will need additional assistance during an emergency. Currently local communities and the State have no means to accurately and thoroughly identify everyone with disabilities and know what type of assistance is needed. Once the reviews are complete and the recommendations have been made concerning the EOPs, there may be a need for additional funding, staff, supplies, and equipment to ensure that the State, cities, and counties have the capability to adequately assist people with disabilities during an emergency.

An additional issue the committee should review is the legal capacity concerning evacuations. As stated in HM 87 on page 5, there is no legal means for a mayor or county executive to order a mandatory evacuation in New Mexico. HM 87 does not further address the issue of state statute concerning evacuations. DHSEM is recommending that the committee review state statutes on evacuations and make recommendations on how to change current law. The committee should review if and how to give the State, cities, and counties the capability to order mandatory evacuations, adequately shelter people and animals, and how to handle those who refuse to evacuate.

JA/ds