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## FISCAL IMPACT REPORT

SPONSOR: Lundstrom DATE TYPED: 2/9/03 HB 290

SHORT TITLE: Civil Liability for Natural Gas Workers SB \_\_\_\_\_

ANALYST: Maloy

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |      | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY03                    | FY04 | FY03                        | FY04 |                      |               |
|                         | NFI  |                             |      |                      |               |

### SOURCES OF INFORMATION

Responses Received From  
 Energy, Minerals and Natural Resources Department  
 Office of the Attorney General

### SUMMARY

#### Synopsis of Bill

House Bill 290 provides that a licensed person engaged in manufacture, assembly, repair, sale or installation of liquid petroleum (LP) gas equipment will be liable for injuries caused by the manufacture, assembly, sale or installing of LP gas equipment by a non-licensed person if the licensed person had written notice or actual knowledge of the performance of work by the unlicensed person, and failed to inspect the equipment within thirty (30) days after receipt of such notice or knowledge.

The liability standard for the licensed person is gross negligence or willful or wanton misconduct.

#### Significant Issues

HB290 imposes liability on any person who is licensed to deal with LP gas equipment and who receives notice that such equipment has been manufactured, sold, installed or serviced by an unlicensed person. Liability is not expressly limited to licensed persons who manufactured, sold, installed or serviced the particular equipment that caused the injury.

If the intent is to exempt a licensed person from common law liability if the licensed person is simply negligence, or if there existed a defect in the product at the time of manufacture or sale that caused the injury, Subsection B does not achieve that result. New Mexico's courts construe exemptions from liability narrowly. An express exemption from statutory liability would not alleviate a claim of liability under the common law.

Subsection C provides that the bill is not intended to limit liability in instances of gross negligence or willful or wanton acts of the licensed person. But, what about simple negligence, or a defect in a product? Reading subsections B and C together arguably gives rise to two possible interpretations. They can be interpreted to afford an exemption of liability in such situations or to not to afford such an exemption.

### **FISCAL IMPLICATIONS**

HB 290 contains no appropriation and has no direct effect on revenue or expenditures of the state. It may, however, have an indirect impact on such offices as the courts due to the suits this legislation may give rise to. This indirect impact will not likely be significant, since there should not be a large number of these suits.

### **TECHNICAL ISSUES**

As noted above under Significant Issues, the bill is ambiguous regarding whether there must be some relationship or tie between the licensed person and the unlicensed person. Can a licensed person be held liable for the work of just any unlicensed person?

Subsection A [page 2, lines 1 and 2] contains the words "written or actual knowledge." Compare Subsection B [page 2, lines 7 and 8], which say "written notice or actual knowledge." In the interest of clarity and consistency, the bill should be amended to say "written notice or actual knowledge" in both places.

Subsection B of HB 290 is repetitive and can be struck. It exempts a licensed person who does not have notice of work performed by an unlicensed person from the "liability of Subsection A of this section." Subsection A unambiguously imposes liability *only* on a licensed person who has such notice.

SJM/njw:yr