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FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/2006

SPONSOR Moore LAST UPDATED _____ HB 298

SHORT TITLE Liquefied Petroleum Gas Worker Liability SB _____

ANALYST McSherry

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI	NFI	NFI	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 298, "Liquefied Petroleum Gas Worker Liability," proposes create a new section of the Liquefied Petroleum Gas (LPG) and Compressed Natural Gas (CNG) Act.

The new section, "Liability Limited" would:

1. Limit liability for liquefied petroleum gas salespersons, suppliers, handlers or transmitters in the case that:
 - a. Damage was caused by alterations, repairs, or modification which was performed without the knowledge of the seller, supplier, handler or transporter.
 - b. Damage caused by use of an LPG appliance or equipment for purposes or in a manner other than the intended purposes.
2. Restrict persons who follow procedures established by the national fir protection association from being found "grossly negligent" or "willful and wanton."

Since the underlying LPG and CNG Act does not define the terms "equipment" and "appliance, they take on their ordinary dictionary meanings.

FISCAL IMPLICATIONS

There are no known fiscal impacts which could result from this Bill's enactment.

SIGNIFICANT ISSUES

The Attorney General's Office cites the following concerns:

1. Because the bill uses the phrase "knowledge *and consent*", it would protect a retail seller, supplier, handler or transporter of LPG that knew, or had reason to know, that an alteration, modification or repair had been accomplished in a manner likely to cause injury, damage or loss but without that defendant's consent. Thus, the retail seller, supplier, handler or transporter, having given no consent, would have no liability for selling, supplying, handling or transporting of liquefied petroleum gas to an injured party even though it was aware of the dangerous potential for injury to the consumer.
2. The provisions relating to the use of LPG equipment or appliances would codify the evidentiary basis for a "reasonable" expectation.
3. The clause relating to "gross negligence" and "willful and wanton" creates an unrebuttable presumption as a matter of law upon the showing of compliance with the National Fire Protection Association's standards without regard to the facts of a given situation. A rebuttable presumption with the high standard of clear and convincing evidence would allow for unusual situations not foreseen in the drafting of this legislation and still provide the protections sought.

ALTERNATIVES

AGO proposes the following amendments:

1. Proposed section A.(1): "the alteration, modification or repair of an liquid petroleum gas appliance if the modification or repair was done without the knowledge ~~and consent~~ of the liquid petroleum gas seller, supplier, handler or transporter; or"
2. Proposed section B: "Unless shown otherwise by clear and convincing evidence, Aa person who follows the procedures established by the standards of the national fire protection association as promulgated in rules by the commission pursuant to Section 70-5-5 NMSA 1978 shall not be deemed to be:
 "(1) grossly negligent; or
 "(2) willful and wanton."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RLD asserts that whether or not the bill is passed, it will have no impact on CID or the LP Gas Bureau. However, the agency asserts that there is a national trend toward enacting this kind of legislation for the purpose of limiting liability of LP gas professionals with respect to law suits for damage resulting from user error or negligence. The Department further asserts that if New Mexico does not pass this bill, this limitation on liability will not be afforded to LP gas licensees who are compliant with the applicable legal standards governing their work, and who have had no control over the cause of the damage.

POSSIBLE QUESTIONS

1. Is there a trend of LP licensees being found liable in cases in which LPG equipment and appliances are used for unintended purposes?
2. Is there a trend of LP licensees being found liable for damage caused by unknown repairs, alteration or modifications?

EM/yr