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FISCAL IMPACT REPORT

SPONSOR Komadina ORIGINAL DATE 01/24/2007 LAST UPDATED _____ HB _____
SHORT TITLE Construction Contractor Limited Liability SB 44
ANALYST Moser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(0.0)**			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

****This bill poses the risk of liability claims attributed to the volunteer contractor's or architect's negligence.**

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

Department of Public Safety (DPS)

Architectural Board of Examiners (ABE)

SUMMARY

Synopsis of Bill

Senate Bill 44 provides that contractors and architects who voluntarily and without compensation provide services at the scene of a declared national, state or local emergency shall not be liable for any personal injury, wrongful death, or property damage caused by the contractor or architect's acts, errors or omissions in the performance of those services.

SB 44 further provides that this immunity applies only to a voluntary contracting or architectural service that occurs within 30 days of the emergency, disaster or catastrophic event, unless extended by an executive order issued by the Governor. Finally, there is no immunity provided for wanton, willful or intentional misconduct or to a person whose act or omission caused the disaster or catastrophic event.

FISCAL IMPLICATIONS

Indeterminate.

SIGNIFICANT ISSUES

Since a volunteer would be granted immunity under this bill and could cause personal injury or property damage this would not remove the government from liability for contractor negligence because a valid assumption would be that the contractor is under the supervision of the government or had received training. The NMDOT gives an example of how the NMDOT could be impacted involves a disaster or catastrophic event occurring on a public roadway, or which involves the use of a public roadway within the NMDOT's jurisdiction. During such an emergency, a roadway might need to be cleared and a volunteer contractor attempts to do so. If the contractor causes personal injury or property damage, he will be immune from liability under this bill. However, the issue would be whether the governmental agency responsible for overseeing the emergency response, the NMDOT in this case, is liable for the contractor's negligence.

An injured person might claim that even though the tortfeasor (volunteer) is immune, the agency (NMDOT) should be liable for the volunteer's negligence because it failed to train or properly supervise the volunteer in the performance of its activities during the emergency. The NMDOT suggests that perhaps volunteer contractors or architects would first have to be approved or trained by the responsible agency, or that the volunteers would work under the supervision of the responsible agency, the bill should provide that the negligence of a volunteer contractor or architect at the scene of a disaster or catastrophic event would not be imputed to the governmental agencies who are responsible for overseeing the emergency response.

TECHNICAL ISSUES

The regulation and licensing departments indicates that the legislation does not define the term "contractor" and that the legislation could be read to include unlicensed contractors and licensed contractors performing services outside the scope of their licenses. It could also be read to exclude journeymen who are the only individuals who are legally authorized to perform electrical, mechanical and plumbing contracting in New Mexico.

The New Mexico Board of Examiners for Architects suggests the following wording be added to the bill: on page 2, under section 2, the words "Rules and Regulations" be added after "Architectural Act". This is the full name of the Act and will enable the Board to enact the wording of the bill into its Rules and Regulations in a timely fashion.

GM/nt