

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/11

SPONSOR Larrañaga LAST UPDATED \_\_\_\_\_ HB 64

SHORT TITLE Construction Contract Litigation Location SB \_\_\_\_\_

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	\$9-\$1.6 \$9.0 to \$16.0	\$9-\$1.6 \$9.0-\$16.0	\$.18-\$3.2 \$18.0-\$32.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 General Services Department (GSD)  
 Regulation & Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 64 if enacted would require that all litigation and alternative dispute resolution of all public and private construction contracts for work in New Mexico to be conducted in New Mexico.

### FISCAL IMPLICATIONS

Costs to implement the bill are dependent on the number of new cases filed in New Mexico courts. The costs shown on the table were derived from data provided by AOC. Costs include those incurred for judicial time and expenses incurred. The lesser costs suggest a rapid resolution to a case while the higher figure indicates a more complex case that goes to trial. Assuming ten additional cases per year, the costs are increased tenfold: from \$9,000 to \$16,000.

### SIGNIFICANT ISSUES

This bill would restrict the ability of both public and private entities in the state that contract for

construction services in New Mexico to enter into contracts that provide for litigation of any contract issues in a forum outside New Mexico. As to these types of contracts entered into by state and local governments, these restrictions could limit the number of bidders on these contracts.

If the intent is to have these provisions apply only to construction services' contracts entered into by state and local governmental entities, language clarifying that intent would be beneficial.

### **TECHNICAL ISSUES**

As AOC notes, this bill appears to apply to construction of a “build to suit” project.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The way this bill ensures that New Mexico construction services' contracts cases would be litigated in New Mexico is by declaring any choice of law provision (generally in which the parties may choose the law of another state to be applied to a contract dispute) to be void and against the public policy of the State. Not enacting this bill would continue allow State and local governments and private parties entering into contracts for construction services be free to enter into contracts which provide for resolution of contract disputes using the law, courts or alternative dispute mechanisms of other states.

MD/bym