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FISCAL IMPACT REPORT

SPONSOR Keller **ORIGINAL DATE** 02/18/09
LAST UPDATED 3/16/09 **HB** _____

SHORT TITLE LFC Review of State Funding Recipients **SB** 531/SFLS

ANALYST Sallee/Patel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)

Department of Finance and Administration (DFA)

Higher Education Department (HED)

Public Education Department (PED)

SUMMARY

Synopsis of SFI Substitute

Senate Floor Substitute for Senate Bill 531 would formalize the Legislative Finance Committee's (LFC) existing program evaluation and review function in statute, expand LFC authority to receive and protect confidential information and clarifies the definition of agencies subject to the sections.

SFLS for SB 531 provides for a new section of Chapter 2, Article 5 which would require the LFC to establish a "Program Evaluation Division" to conduct program evaluations, information technology evaluations and special reviews for the purpose of providing policymakers with objective, independent and credible assessments of agencies to allow them to determine whether expenditures of public funds are producing desired results; determine whether agencies are complying with state and federal procedures relevant to their operation and funding; determine whether policy alternatives could improve operations and save money; and assess the effect of agency operations on state finances.

SFLS for SB 531 requires the division to report the results of its work to the LFC, the State Legislature and the public. The bill provides that background material, including working papers and notes, used as part of any program evaluation or review are not public records for the purpose of the Inspection of Public Records Act.

The substitute bill amends Section 2-5-7 NMSA 1978 to require agencies provide requested information to LFC and provides that information provided by an agency under that Section that is confidential by law or exempt from public inspection under the Inspection of Public Records Act shall not be disclosed by members of the committee, its director or staff.

The substitute bill clarifies the definition of “agency” for the new section and Section 2-5-7 NMSA 1978 as any department, agency, institution, instrumentality or any political subdivision of the state.

FISCAL IMPLICATIONS

None. The LFC currently operates a program evaluation function under existing statutory authority (Section 2-5-3 NMSA 1978).

SIGNIFICANT ISSUES

SFLS for SB 531 appears to reflect the recommendation of the Legislative Structure and Process Study Task Force (Task Force) from the 2007 interim. The Task Force recommended that the LFC’s existing program evaluation function be put into statute and that LFC have the ability to receive confidential information. According to the Task Force final report “The Legislative Council created the Task Force to develop recommendations to help the legislature conduct its work and perform its duties more effectively.”

Since 1991, the LFC has conducted program evaluations and reviews (formerly called performance audits) of government entities under existing statutory authority (Section 2-5-3 NMSA 1978) which provides broad oversight authority to examine and report not only the cost, but the operation and functioning of government under the laws. The bill would establish the existing program evaluation and review function in statute.

DFA analysis of the introduced version of the bill indicates that SB 531 appears to extend LFC oversight to instrumentalities of the state, such as the New Mexico Finance Authority and the New Mexico Lottery Authority among others. It’s unclear that LFC does not already have general oversight of these entities considering their financing roles in the state. For example proceeds from the State Lottery are used to finance tuition of certain qualifying students to attend New Mexico higher education institutions. Given that “instrumentalities” are a relatively modern quasi-government function it may be prudent to update the section to clarify that these entities are subject to LFC oversight. The substitute bill does not impact instrumentalities for purposes of the State Budget Act, though House Bill 381 does.

SFLS for SB 531 requires the program evaluation and review division to report the results of its work to the LFC and make reports available to the legislature and the public, which is current practice. Like most state’s legislative program evaluation enabling statutes or standards, the substitute bill provides that background material, including working papers and notes, are not subject to disclosure. State’s with similar provisions include, but are not necessarily limited to,

Arizona, Colorado, Florida, Mississippi, Nebraska, Nevada, New Hampshire, South Carolina, and Texas.

SFLS for SB 531 would remove the limitation that entities do not have to provide information to LFC that is made confidential by law. DFA expressed concern with that this provision, which was also in the introduced versions of the bill, could encroach on executive privilege and raises separation of powers issues. This concern appears unfounded given that the current statutory limitation in New Mexico appears unique because “nearly every state legislative program evaluation office has generally unrestricted access to state and local records, including records deemed confidential by state and federal laws,” according to the National Conference of State Legislatures, *Establishing a Program Evaluation Office – Recommendations to the North Carolina General Assembly*, 2007.

SFLS for SB 531 requires that information shall not be disclosed by LFC that is made confidential by law or that is already exempt from public disclosure under Inspection of Public Records Act (IPRA). DFA questions whether a penalty provision should be included for unauthorized disclosure. However, the Legislature has already decided to establish penalties, or not, for unauthorized disclosure of information in the respective laws making the information confidential in the first place.

PERFORMANCE IMPLICATIONS

LFC would continue to conduct program evaluations and reviews under existing statutory authority (Section 2-5-3 NMSA 1978). Providing full access to information would allow LFC to more fully carry out its oversight and budget functions, while providing the necessary protections of confidential information to allow agencies to fully cooperate.

OTHER SUBSTANTIVE ISSUES

Some agencies have raised questions whether information they consider confidential from disclosure to the public under IPRA should also apply to LFC. A recent advisory opinion issued by the Office of the Attorney General indicated that agencies cannot rely on IPRA to withhold information because “LFC information requests to agencies are not subject to the requirements and procedures that apply to requests to inspect public records under IPRA.” The advisory opinion points out that only in a case where there is a law making the requested information confidential, can an agency deny an LFC request. As a result, while agencies may choose not to disclose certain information to the public under IPRA, it cannot do the same for LFC requests.

Like New Mexico, most state legislatures have created specialized units that conduct research studies and evaluate state government policies and programs to help meet legislative oversight responsibilities, according to a 2008 report by the National Legislative Program Evaluation Society, a staff section of the National Conference of State Legislatures. The report states:

Among the many roles that state legislatures play—debating public policy, enacting laws, and appropriating funds—is the fundamental responsibility to oversee government operations and ensure that public services are delivered to citizens in an effective and efficient manner. This accountability role [program evaluations] is a critical part of our constitutional system of separation of powers and is essential to ensuring the trust that citizens place in government. These studies—variously called program evaluations,

policy analyses, and performance audits—address whether agencies are properly managing public programs and identify ways to improve these programs and cut government costs....[and] may address varying issues, including whether agencies are following legislative intent, whether programs are well managed and are producing the desired results for citizens, and whether policy alternatives could improve operations and save taxpayer money.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

LFC would continue to conduct program evaluations and reviews under existing statutory authority. While agencies generally cooperate with LFC requests for information, continuing to limit authority to require receipt and protect confidential information could hamper its oversight functions of public expenditures.

CS/mc