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FISCAL IMPACT REPORT

SPONSOR: Heaton DATE TYPED: 3/20/03 HB 231/aHGUAC/aHJC/aSFL#1

SHORT TITLE: Public Health Emergency Response Act SB _____

ANALYST: Dunbar

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 194

Relates to HB 232, HB 253 and HB 254

SOURCES OF INFORMATION

Responses Received From

- Department of Health (DOH)
- Health Policy Commission (HPC)
- New Mexico Department of Corrections (NMCD)
- Department of Public Safety (DPS)
- Attorney General (AG)

SUMMARY

Synopsis of SFL Amendment

The Senate Floor Amendment # 1 removes HJC amendments 2 through 12 and:

- Changes the time that a person can be quarantined pursuant to an ex parte order from 10 to 5 days without a court hearing.
- Takes account of the Tort Claim Act in matters of liability in Section 14 (Immunity).
- Removes language in Section 14 indicating that immunity shall not extend to acts of willful misconduct, gross negligence or recklessness.
- Clarifies language by referencing the “ the Eminent Domain Code” when taking or appropriating property.
- Adds language regarding provisions for the appeal of a determination made by the attor-

ney general.

- Adds a new Section (16) to protect the job of a person who has been quarantined under the provisions of the Health Emergency Response Act.

Synopsis of HJC Amendment

The House Judiciary Committee removed all HGUAC amendments. HJC also amends Section 14 (Immunity) of the bill by taking account of the Tort Claim Act in matters of liability.

The “Compensation” section of the bill is amended by changing the amount of compensation calculated when property is taken during a public emergency to include “lost revenues due to the taking or appropriation of property including a health facility”. (The language does not track the amended language of SB 194 its duplicative counterpart.) Further, the amendment made the following changes to the bill:

- Removed Section 15B pertaining to compensation of a health facility when it is decontaminated.
- Inserted language regarding provisions for the appeal of a determination made by the attorney general.
- Inserted a new Section (16) to protect the job of a person who has been quarantined under the provisions of the Health Emergency Response Act.
- Clarified language by referencing the “the Eminent Domain Code” when taking or appropriating property.
- Clarified language by substituting “taking or appropriation” of property for “destruction” or “destroyed” property.

Synopsis of HGUAC Amendment

The House Government and Urban Affairs Committee amend the “Compensation” section of the bill by:

- Changing the amount of compensation calculated when property is taken during a public emergency to include “lost revenues of a health facility”.
- Changing the definition when compensation will not be granted when property is decontaminated to provide for “clear and convincing evidence” that the property may endanger the public health.
- Providing compensation “in accordance with existing law”

Synopsis of Original Bill

House Bill 231 relates to public health emergencies and would enact the Public Health Emergency Response Act. The bill provides for procedures for declaring and responding to a public health emergency, provides protection of individual civil rights, provides civil penalties for violation of the Act, and would further clarify the Governor’s authority to declare and terminate a public health emergency.

HB 231 also directs the Department of Health (DOH) to coordinate and consult with the Department of Public Safety and the Director of Homeland Security in order to protect the health

safety and welfare of the people.

During an emergency, the DOH Secretary is given special powers to coordinate public health care facilities and supplies. Public health care facilities include non-federal facilities or buildings, whether public or private, for-profit or nonprofit, that are used, operated, or designed to provide health services, medical treatment or preventive care. Facilities utilized will be justly compensated as determined by the state Attorney General.

The bill also adopts procedures for the DOH Secretary for isolating and quarantining persons who have threatening communicable diseases. The procedures include steps for obtaining an ex- parte order from the court authorizing isolation or quarantine. Such orders would need to clearly justify the need for isolation/quarantine. The Secretary would be able to isolate/quarantine a person for 24 hours without a court order, but would need a court order for any further isolation/quarantine. Under the bill, a person that was being held under isolation/quarantine could petition the court to let him/her out of isolation/quarantine. A hearing must be held within 3 business days.

The bill also addresses vaccination and treatment of a public health threatening communicable diseases. A person can be isolated/quarantined by the DOH Secretary, if that person is unable or unwilling to undergo vaccination and that person is a threat for spreading a public health threatening communicable disease.

Also, the bill allows for the DOH Secretary and the Secretary of the Department of Public Safety to enter into memorandums of understanding with Indian tribes to effectuate the act.

Finally, the bill provides for immunity from liability for health officials when complying with or attempting to comply with this act. The bill provides for a \$5,000 civil penalty for anyone who violates this act and that the act will not limit any other remedies under common law or statutes.

The bill contains an emergency provision.

Significant Issues

The Department of Health (DOH) already has authority to respond to public health conditions in the Public Health Act, Sections 24-1-1, *et seq.*, NMSA 1978. However, the delineation of procedures and powers during a public health emergency involving multiple persons is not provided in current statute; nor is there delineation concerning the rights of citizens during a public health emergency.

During the 2002 Legislative Session, Senate Joint Memorial 62 and House Joint Memorial 34 directed DOH, the NM Department of Public Safety (NMDOH), and the Attorney General (AG) to study existing emergency response laws. The Memorials further recommended that DOH review the federally commissioned CDC Model State Health Emergency Powers Act and make recommendations for necessary legislation to address a public health emergency response. The agencies designated a Tri-Agency Attorney Work Group to collaborate on the Study. The Work Group conducted a series of eight public meetings throughout the State from April to December 2002 to solicit public comment. Based on the responses received from these town hall meetings, as well as numerous meetings with interested groups such as the American Civil Liberties Union (ACLU), the New Mexico Hospital and Health Systems Association, the New Mexico Press As-

sociation, the Foundation for Open Government and other New Mexico state agencies, the work group created this legislation.

A significant issue raised by the NM Corrections Department (NMCD) pertains to the prisons being considered health facilities as defined within the bill. Because the prison facilities do offer health services to the inmates, the facilities could be subject to control by the DOH Secretary in the event of a health emergency. This would mean that the Secretary could take over the infirmaries to assist in a public health emergency. The Secretary would also have the power to take over medical supplies for rationing. However, the Corrections Department indicates that since such an emergency is unlikely and the use of NMCS facilities is slight, the possible impact of this bill to NMCD is minimal.

PERFORMANCE IMPLICATIONS

HB 231 relates to the DOH Strategic Plan, Program Area II, which assures statewide availability of essential public health functions and provides for conducting disease and risk factor surveillance, surveys and special studies to monitor and identify conditions of public health importance, and to control disease outbreaks and urgent health conditions.

Passage of the proposed legislation will have positive performance implications on the New Mexico Department of Public Safety and state government, in general, in that, as noted above, it will provide state government with a blue print to follow in order to adequately respond to a public health emergency.

FISCAL IMPLICATIONS

Departments acknowledge negligible fiscal implications upon passage of this legislation. The proposed statutory structure would create immunity for government response in the face of a public health emergency.

ADMINISTRATIVE IMPLICATIONS

It should be noted that due process concerns are addressed throughout the legislation.

DUPLICATION, RELATIONSHIP

Duplicates Senate Bill 194, Public Health Emergency Response Act.

Relates to:

- HB 232, Emergency Powers Code, which would require the recompiling of NMSA 1978 Sections relating to Disaster Relief and Emergency Management.
- HB 253, which would amend the NM Riot Control Act to provide the Governor with the express authority to order an evacuation during a state of emergency.
- HB 254, which would amend the NM Inspection of Public Records Act to protect from public disclosure tactical response plans or procedures prepared by or for the state or a local subdivision of the state.

TECHNICAL ISSUES

HPC recommends the following definition changes in HB 231:

- “**health care supplies**” Page 2, line 20 should include food and water as a requirement to operate any medical facility. Also, service contractors for much of the high technology equipment needs to be included. In addition, “Durable medical equipment” has a federally established definition that is generally accepted in the health care industry. The definition is: “Medical equipment that is ordered by a doctor for use in the home. These items must be reusable, such as walkers, wheelchairs, or hospital beds (<http://www.medicare.gov/Glossary>).” HB231 may intend for the definition to be broader and include equipment that may not be reusable, and is not used in home settings, and/or is not ordered by a doctor.
- “**health facility**” Page 2, line 25 is defined as a “facility licensed by the state of New Mexico pursuant to the provisions of the Public Health Act.” Facilities also already licensed by the state, but not included in the definition under this section also include ambulatory surgical center, limited diagnostic and treatment centers, rural health clinics, and new or innovative clinics.

HPC notes that HB231 is silent about emergency medical services and emergency medical services transportation in any capacity. A very important component of response to a public health emergency will be emergency medical services.

HB231 empowers the DOH Secretary to assume responsibility for the operation of healthcare facilities and to regulate, ration and distribute healthcare supplies. HPC states that HB231 is also silent about how the distribution of supplies would occur. The Public Regulatory Commission regulates motor carriers in New Mexico and authority would be needed to direct commercial carriers to deliver supplies where needed.

Gerald Champion Memorial Hospital in Alamogordo has a unique circumstance related to HB 231. In 1999, it became the first hospital in the country in a civilian/military-shared facility between Holloman Air Force Base and a private owner. The facility is licensed by the State of New Mexico. The status of the facility may need to be clarified with respect to HB231.

OTHER SUBSTANTIVE ISSUES

HB 231 provides direction on how the State of New Mexico should proceed upon a declaration of a public health emergency. HB231’s intent is to ensure that civil liberties are protected within the limits of the state and federal constitution while simultaneously protecting the public health needs of New Mexicans. Legal counsels from three agencies crafted HB 231: DOH, Department of Public Safety and the Attorney General’s Office. After the September 2001 terrorist attacks, the Centers for Disease Control and Prevention distributed a Model Public Health Emergency Powers Act to stimulate review of existing state statutes. Several provisions of HB 231, and its duplicate bill, SB 194, are based upon the Model Act.

The draft document was also presented to the Legislative Health and Human Services Committee, the Interim Corrections Oversight Justice Committee and the Interim Information Technology Oversight Committees. Each Interim Committee endorsed the bill. In addition to the Interim

Committees, Governor Richardson and the three agencies (NMDOH, NMDPS, and AG) have endorsed this bill.

Legal research was conducted under contract with the UNM Institute of Public Law concerning existing emergency powers statutes in other states and on other emergency preparedness legal issues.

POSSIBLE QUESTIONS

Much of the supplies that New Mexico health care facilities utilize come from out of state sources with overnight deliveries and limited warehousing in New Mexico. Will the DOH Secretary's have regulatory responsibilities on inter-state commerce when faced with a shortage of health care supplies?

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