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## FISCAL IMPACT REPORT

SPONSOR: HBIC DATE TYPED: 3/19/03 HB 1007/HBICS

SHORT TITLE: Transfer Ambulance Regulation SB \_\_\_\_\_

ANALYST: Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$375.0	Recurring	General Fund
			\$60.0	Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Relates to HJR 13, 14

### SOURCES OF INFORMATION

Responses Received From  
 Department of Health (DOH)  
 Public Regulation Commission (PRC)  
 Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

The House Business and Industry Committee Substitute to House Bill 1007 proposes to transfer the regulation of ambulance services from the PRC to the Department of Health.

#### Significant Issues

- Section 1 would amend Section 5-1-1 NMSA 1978, “Political Subdivisions – Ambulance Service” to change “State Corporation Commission” to the “Department of Health”.
- Section 2 would amend the definitions section of the EMS Act, Section 24-10B-3 to change “State Corporation Commission” to the DOH.
- Section 3 would amend the duties of the Injury Prevention and EMS Bureau to remove subsection 24-10B-4.B, NMSA 1978 which states “provision of technical assistance to the pub-

lic regulation commission...”

- Section 4 would amend the Personnel Licensure section of the EMS Act to remove a portion of subsection 24-10B-5.A. which states “When setting requirements for the licensure of persons also subject to the Ambulance Standards Act, the Bureau shall consult with the State Corporation Commission.”
- Section 5 would amend the definition section “Indigent and County Health Care Act”, Section 27-5-4, NMSA 1978, to change Public Regulation Commission to the DOH.
- Sections 6-8 would amend the definitions, duties and applicability sections of the Ambulance Standards Act, Section 65-6-1, et seq., NMSA 1978, to remove the Public Regulation Commission and to add the DOH.

The following new sections are added to HB1007 Substitute that were not in HB653 Substitute:

- Section 9 removes ambulance standards from the list of programs staffed by the Transportation Division.
- Section 10 amends the definition of “common motor carrier” to specifically exclude ambulances.
- Section 11 adds a temporary provision to transfer personnel, property, contracts and references in law on July 1, 2003 to the Department of Health.

A special subcommittee of the Legislative Council, the Public Regulation Commission Subcommittee, has discussed the transfer of ambulance regulation recently. The task of the subcommittee was to make recommendation on the structure of the PRC. The conclusion was that the PRC be restructured to focus only on utility and telecommunications regulation. It was recommended that the non-utility functions of the PRC be transferred to other departments. Regulation of ambulance services was identified as non-utility function. The specific recommendation is shown below as reported in the PRC subcommittee report:

***Ambulance Services.*** A 1994 National Highway Traffic Safety assessment for New Mexico recommended ambulance services be transferred to the Emergency Services (EMS) Bureau in the Department of Health. EMS and PRC both support the transfer to better coordinate safety efforts in the state. This coordination would improve services to both the transportation industry and the public. This alternative should also be included in the legislative debate on the creation of a new Homeland Security Department.

It remains unclear in HB 1007 Substitute whether or not the Public Regulation Commission would continue to review and approve rates and charges for ambulance services. On page 12, lines 22 and 23, in amending the Indigent Hospital and County Health Care Act, HB 1007 indicates that, “The rates and charges established by the public regulation commission tariff shall govern as to allowable cost.” If the PRC is going to retain this responsibility, it is unclear how that would be coordinated with the application process and granting of certificates of public conveyance and necessity that the bill proposes to shift to the Department of Health. Although rate setting would be appropriate given the PRC’s expertise in this area, this again demonstrates the lack of coordination between the PRC and the Department of Health in the preparation of this legislation.

## **FISCAL IMPLICATIONS**

The bill provides in Section 11 for the transfer of all personnel, appropriations, money, records, equipment, supplies and other property of the public regulations commission to the DOH.

The transfer of the PRC's current resources dedicated to ambulance regulation would not be adequate according to DOH.

The bill would impose a substantial new workload and resulting fiscal requirement for the DOH. Section 11 of HB 1007 Substitute would transfer unknown resources including personnel, funding, contracts, documents and vehicles to the Department of Health. It is not clear what resources the Public Regulation Commission has dedicated to regulating ambulance services except for one FTE inspector position. It is anticipated that HB 1007 Substitute may only provide about 20% of the resources needed to regulate ambulance services effectively. Other significant resources will be needed to manage this program consistently and effectively.

DOH indicates that HB 1007 Substitute would significantly under-fund DOH to provide state-wide regulation of critical, complex and highly technical components of the ambulance industry. More specifically, based upon the planning that was accomplished in the late 1990s, and recognizing that the rate setting aspects would be retained by the PRC, the DOH would require a recurring appropriation of at least \$375,000 and five (5) additional full time equivalent personnel, including program management and actuarial capacity. Depending upon whether or not the PRC retains the rate setting authority and responsibility for ambulance services, the above amount might be reduce by 1 FTE and \$60,000. Since it is unlikely that DOH would get any vehicle resources, the first year would also require an additional, one time appropriation of \$60,000 for capital acquisition of two vehicles and computer equipment.

## **ADMINISTRATIVE IMPLICATIONS**

As indicated above, the administrative implications of HB 1007 Substitute for DOH to accomplish the transfer of responsibilities to regulate the ambulance industry are beyond DOH current capacities. The DOH would require at least four (4) new full time equivalent (FTE) personnel, or perhaps 5 if the rate setting function is also to switch to DOH, and a recurring appropriation of at least \$375,000 annually (\$315,000 if rate setting is included). The additional staff would include a Staff Manager, one FTE to provide administrative and fiscal support, two FTE's to accomplish ambulance service inspections, and an actuarial position if needed. A transitional period would be required to allow the Department to promulgate new regulations and acquire needed resources including two vehicles. Additional legal resources would also be required to staff the issuance of certificate of public conveyance and necessity, enforcement of standards, and application processes. If such resources are provided, the DOH could manage this program effectively and efficiently and enhance the ambulance industry for the health and safety of all New Mexicans.

The bill would move regulation of ambulances along with undetermined existing resources at the Public Regulation Commission including manpower, funding and vehicles to the Department of Health. The PRC has historically dedicated only one position specifically to ambulance inspections and, beyond that has absorbed the workload within its regulatory infrastructure of the Transportation Division. DOH states that most parties, including the PRC, indicate that the current resource commitment has been totally inadequate to do a quality job in ambulance regulation. The ambulance regulation program would include three significant areas including estab-

lishing an “issuance of certificate of public conveyance and necessity through regulation; setting and maintaining standards for ambulance services, including performing inspections of ambulance services and registered medical-rescue services annually; and enforcing standards to ensure compliance. DOH notes that these are complex activities that cannot be accomplished by existing staff at the DOH Injury Prevention and EMS Bureau.

The PRC employs 1 FTE for regulation of ambulance standards at a cost of \$40.0.

## **CONFLICT**

HB 1007 Substitute conflicts with the changes recommended in SB 527 to enact comprehensive amendments the EMS Act. Of concern is that if HB 1007 Substitute were enacted subsequent to SB 527, some of the substantive changes and the renumbering would affect the changes in SB 527 and may eliminate some of the important changes to the EMS Act.

## **TECHNICAL ISSUES**

DOH indicates that:

- Article XI, Section 2 of the NM Constitution provides that the Public Regulation Commission shall have responsibility for the regulation of “transportation companies, including common and contract carriers.” Legal counsel for the PRC believes this “may” need to be amended to allow DOH to regulate ambulances. However, Section 65-2-82. F. of the Motor Carrier Act defines “common motor carrier” with exclusions for “farm carriers” and “commuter vanpools”. It appears therefore that the Legislature has excluded at least two classes of transportation from the definition and could do so again as it attempts in HB 1007CS. However, there may still be a constitutional question about this transfer.
- On page 12, lines 22-23 of the bill, “rates and charges” are still being established by the “public regulation commission tariff”. Is it the intent of the bill to keep these determinations at the PRC?

## **OTHER SUBSTANTIVE ISSUES**

Since the 1974 enactment of the Ambulance Standards Act (Sec. 65-6-1, et.seq., NMSA 1978) the Public Regulation Commission (PRC) and its predecessor, the State Corporation Commission, has been exclusively responsible for the regulation of certificated ambulance services (currently about 110 statewide) and, more recently, registered medical-rescue services (about 40 statewide). This regulation and oversight of ambulance services includes issuing certificates of convenience and public necessity on a franchise-type basis, conducting inspections, approving rates, overseeing transportation standards, and the regulation of health and medical standards for the industry.

In 1994, the Federal National Highway Traffic Safety Administration performed a review of the New Mexico EMS System and listed among their top recommendations for system improvement, in the executive summary to the report, to “shift all EMS-related responsibilities, including monitoring quality assurance activities and the regulation and inspection of ground ambulance services from the State Corporation Commission (now PRC) to the EMS Bureau (now Injury Prevention and EMS Bureau). The redirection of resources should include sufficient personnel to meet required inspection schedules and perform other necessary duties.”

The DOH and the Statewide EMS Advisory Committee did some preliminary planning in 1997, to explore moving regulation of ambulances to the DOH. The State Corporation Commission resisted this change and committed itself to improving its oversight and regulation of the ambulance industry. However, it was determined at the time that to perform this regulatory program adequately would require significant new staff positions and resources for the DOH.

In the summer of 2002, the PRC under new leadership began to express interest in getting out of the ambulance regulation business. After some discussions, the Secretary of Health sent a letter to the Public Regulation Commissioners recommending that the regulation of the health and medical standards aspect could be moved from the Public Regulation Commission to the DOH, but that DOH was not prepared or equipped to take on the rate setting or certificate of need process. There was no response to the DOH Secretary's letter and there has been no contact or discussion from the PRC with the DOH, or the Statewide EMS Advisory Committee or with its own Ambulance Advisory Committee since that time. DOH believes that HB 1007 Substitute is an effort to transfer the PRCs statutory responsibilities to the DOH without adequate planning, collaboration or identification of resources to enable a positive transition to occur for the benefit of New Mexico.

Nationally, Patient Transportation (ambulance services) is one out of designated 16 components of the Emergency Medical Services System, as outlined in the "EMS Agenda for the Future". Emergency Medical Services is considered as a critical, safety net health and medical program.

#### **AMENDMENTS**

DOH suggests the following amendments:

Once the issue of rate setting is clarified, add an appropriation section of \$315,000-\$375,000 including the establishment of 4 or 5 new FTEs, depending upon what the transfer of funds and positions from the PRC would produce.

Amend Section 2, Section 24-10B.-3.G. to change the name of the Bureau to the "Injury Prevention and EMS Bureau"

**BD/yr:njw**