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FISCAL IMPACT REPORT

SPONSOR Grubestic DATE TYPED 3-7-05 HB 515/aSCORC/aSJC/aSFI#1
 SHORT TITLE Prohibit Smoking in Certain Areas SB /aSFI#2
 ANALYST Collard

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 354

Relates to HB 81, HB 290, HB 319, HB 452, SB 50, SB 56, and SB 389

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Health Policy Commission (HPC)

Administrative Office of the Courts (AOC)

Attorney General's Office (AG)

New Mexico Corrections Department (NMCD)

Public Education Department (PED)

SUMMARY

Synopsis of SFI #2 Amendment

The second Senate Floor amendment to Senate Bill 515 changes the definition of employer from a person, partnership or corporation that employs the services of one or more persons to one that employs the services of five or more persons.

Synopsis of SFI #1 Amendment

The first Senate Floor amendment to Senate Bill 515 strikes language requiring employers to implement, post and maintain a written smoking policy.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 515 makes several substantive and clarifying changes.

The amendment permits smoking in a private residence that is being used commercially to provide child care, adult care or health care. The original bill prohibited smoking in a private residence while it was being used for one or more of these purposes.

The amendment changes the provision allowing smoking in a facility of tobacco product manufacturing to a facility of a tobacco product manufacturer. The amendment adds another area where smoking is permitted by adding enclosed areas within restaurants and hotel and motel conference or meeting rooms while these places are being used for private functions and are not open to the general public, provided the smoke does not infiltrate other areas where smoking is prohibited.

The amendment separates existing section 6 into two sections, creating a new section 7 titled "Posted Smokefree Areas."

The amendment removes the provision requiring that signs posted in smokefree areas be printed in a specific type or feature the international smoking symbol.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 515 makes two changes: it includes "the state or a political subdivision of the state" in the definition of an employer and would include an exemption for "a facility of tobacco product manufacturing" as an additional exception to the smoking prohibition. The bill prohibits smoking in all enclosed public places and workplaces in New Mexico, with some exceptions.

TECHNICAL ISSUES

DOH suggests a clear definition of "a facility of tobacco product manufacturing" should be added. The department offers the definition could include, "...a facility with the sole purpose of manufacturing tobacco products for wholesale distribution..." The definition should refer to "tobacco product manufacturer" as defined in Section 6-4-12 NMSA 1978.

Synopsis of Original Bill

Senate Bill 515 proposes to amend the "Clean Indoor Air Act", NMSA Sections 24-16-1 et seq. to prohibit smoking in most enclosed indoor workplaces, enclosed public places, and most means of public transit. It expands the current provisions of that Act to the private sector. This bill would require employees who are smokers to go outdoors, but would also prohibit smoking near doors, windows, or places near entrances or exits. Employers are required to designate smoking areas and post signs. Exceptions include certain stand-alone bars, casinos, tobacco stores, private clubs, and hotel rooms designated for smoking. The bill imposes penalties up to \$500 based upon the number of offenses. Employers won't be penalized if they've posted the necessary signs, implemented appropriate policies, and advised persons who are in violation of the act. The bill also prohibits retaliation against those exercising their rights under the provisions of the act.

Significant Issues

DOH indicates New Mexicans support smoke-free indoor air. Seventy-eight percent of New Mexicans believe that non-restaurant workplaces should be completely smoke-free and 65 percent of New Mexicans believe that restaurant workplaces should be completely smoke-free (NM Adult Tobacco Survey, 2003).

The primary purpose of enacting secondhand smoke (SHS) laws is to protect the public from exposure to human carcinogens. Secondhand smoke is classified as a Group A (Human) Carcinogen. There is no safe level of exposure for Group A toxins. (Environmental Health Information Service, 9th Report on Carcinogens, 2000). SHS is a cause of a number of different developmental, respiratory, and cardiovascular problems in adults and children. Some of these health problems include Sudden Infant Death Syndrome (SIDS); asthma and middle ear infection in children; lung, nasal, and sinus cancer; and heart disease deaths (National Cancer Institute, Health Effects of Exposure to Secondhand Smoke, 1999).

Comprehensive clean indoor air ordinances are effective in reducing exposure to secondhand smoke and can also help other tobacco users quit and reduce daily tobacco use (Morbidity and Mortality Weekly, A Report on Recommendations of the Task Force on Community Preventive Services, 2000).

PED indicates schools are required by regulation to be tobacco free and required by federal regulation to be drug free and are required by federal regulation to post drug-free school zone signs. These signs are not specific to tobacco.

AOC notes the bill defines further and more specific smoking restrictions to the Clean Indoor Air Act. Owners and managers of affected premises are required to post signs and designate areas for smoking and non-smoking in order to be in compliance. Local fire and police departments have additional enforcement duties placed upon them.

AG notes the bill modifies the current definition of “employer” to remove language referring to “the state or any political subdivision of the state who employs the services of more than fifteen people.” NMSA Section 24-16-3A. The bill would define “employer” as “a person, partnership, or corporation that employs the services of one or more persons”. Since governments are usually not included in those terms, the bill may have the effect of removing state agencies and local governments from the provisions of the Clean Indoor Air Act. Even though the term “indoor workplace” would seem to include areas of governmental employment, only “employers” as defined in the bill are subject to its signage, policy, and enforcement provisions.

Additionally, the current provisions of the Clean Indoor Air Act require state agencies and local governments employing more than 15 people to designate non-smoking areas, and impose fines of \$10 to \$25 for violations of its provisions. This bill strengthens that act, expands it to include the private sector, and recognizes the harm caused by second-hand smoke to non-smokers. However, the bill does not amend NMSA Section 50-11-3A which prohibits employers from causing “disadvantage” to anyone with respect to conditions or privileges of employment because the person is a smoker or nonsmoker. The provisions of this bill may conflict with that section.

PERFORMANCE IMPLICATIONS

AOC indicates FY05 is the second year that the courts are participating in performance based budgeting. This bill may impact the performance based budgeting measures identified for FY06, which may result in a need for additional resources. The courts' performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

FISCAL IMPLICATIONS

Although there is no appropriation considered with this bill, there is an unknown cost related to the purchase and posting of no smoking signs. Additionally, the state will collect revenue based on the penalties section of the bill as follows: \$100 for the first violation, \$200 for the second violation, and \$500 for every fine thereafter within a 12-month period.

ADMINISTRATIVE IMPLICATIONS

AOC indicates a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

NMCD notes the department is already smoke free in all of its facilities, therefore, NMCD's primary obligation under the bill will be to post "no smoking" signs where required and to make sure it has written policies in place that reflect that all of its facilities are smoke free facilities. Additionally, a small amount of administrative time may need to be expended to have written "no smoking" policies in place at all NMCD facilities, or to make sure those policies are already written and in place.

DUPLICATION, RELATIONSHIP

Senate Bill 515 duplicates House Bill 354. Additionally, House Bill 354 relates to Senate Bill 56 and House Bill 452, which propose to change the requirements of cigarette tax stamps, licensing and reporting provisions for cigarette manufacturers and distributors; Senate Bill 50 and House Bill 81, both of which propose to repeal the cigarette tax increase; House Bill 319, which proposes to raise the tax on non-cigarette tobacco products; House Bill 290, which proposes to redistribute master settlement agreement payments into the Tobacco Settlement program fund; and Senate Bill 389, which proposes to prohibit smoking on public and private school campuses and at correctional facilities.

TECHNICAL ISSUES

AG notes the bill should clearly state whether the state and/or local governments fall within the definition of "employer". The bill should also be reconciled with NMSA Section 50-11-3 relating to smoker's rights. PED notes "public place" is not defined in the bill.

OTHER SUBSTANTIVE ISSUES

DOH state ensuring that public places and workplaces are smoke free is a CDC “best practice” and an evidence-based strategy. Multiple evidenced-based strategies must be implemented simultaneously for a tobacco control program to reduce the burden of tobacco on society and New Mexico taxpayers. This bill would advance the Tobacco Use Prevention and Control (TUPAC) program’s work in eliminating exposure to SHS in New Mexico. The Clean Indoor Air ordinances currently cover 42 percent of New Mexicans in the three most populated cities in New Mexico: Albuquerque, Las Cruces, and Santa Fe.

Nationwide, just 43 percent of the 6.6 million food preparation and service occupations workers are covered by smoke-free policies while over three-fourths of white collar workers are protected, including 90 percent of teachers. Discussions of SHS often focus on the health risk to patrons, but restaurant and bar employees’ exposure should be considered.

Levels of SHS in restaurants are about 160 percent to 200 percent higher than in offices that permit smoking and 150 percent higher than in a home with at least one smoker (Siegal, Journal of American Medical Association, Issue 271 no. 9, 1994). Most studies examining SHS exposure are based on home exposure; therefore the SHS health risk for hospitality workers is underestimated.

Long-term health problems caused by secondhand smoke exposure include lung cancer, heart disease, bronchitis, pneumonia, and eye and nasal irritation in adults. In addition to the long-term health problems resulting from secondhand smoke exposure, exposure to SHS for as little as five to 30 minutes can negatively impact your health (Glantz and Parmley, Journal of the American Medical Association, 2001).

Young children are particularly susceptible to secondhand smoke because their lungs are not fully developed. Childhood exposure to secondhand smoke is associated with an increased risk for sudden infant death syndrome (SIDS), chronic respiratory symptoms, middle ear infections, low birth weight, asthma, pneumonia, and bronchitis in young children (National Cancer Institute, Smoking and Tobacco Control, monograph 10, 1999).

Smoke-free laws either have no economic impact or have a positive impact on the economic health of businesses within the hospitality industry, according to scientific studies that analyzed the impact of smoke-free laws on businesses (Scollo, Lal, Hyland, Glantz, Tobacco Control, 2003). Experiences in other states demonstrate that smoke free measures have either had no effect or a positive effect on local economies. Many studies analyzing the economic impact of smoke free measures concludes that business, bar, and tourism revenues are not negatively impacted by smoke free measures.

HPC notes there is a considerable amount of epidemiological literature and laboratory data on the mechanisms by which relatively small exposures to toxins in tobacco smoke seem to cause unexpectedly large increases in the risk of acute cardiovascular disease. “Exposure to secondhand smoke increases the risk of fatal and non-fatal coronary heart disease in non-smokers by about 30 percent. Because coronary heart disease is a leading cause of death in many countries, even relatively small increases in risk from this one factor can result in a large population burden of disease attributable to exposure to tobacco smoke.” (*British Medical Journal*-Apr 2004)

Also, the results of the observational study in Helena, Montana are provocative: hospital admissions for acute myocardial infarction (heart attack) declined by about 40 percent during the six months in which a comprehensive local ordinance on clean air was in effect, and rebounded after the ordinance was suspended. (*British Medical Journal*-Apr 2004)

In another study to determine the effect of anti-smoking laws, researchers analyzed smoking prevalence from 1960 to 2000 and lung cancer incidence 20 years later from 1980 to 2000. They also looked at deaths caused by respiratory diseases, such as emphysema, from 1980 to 1998. The results appear in the December 2004 issue of the journal *Chest*. The study showed that daily smoking prevalence among men dropped from 58 percent in 1960 to 28 percent by 2000. Lung cancer rates had increased from 1965 to 1971, but they decreased steeply from 80 to 32 cases per 100 thousand men in 2000. The rate of deaths due to respiratory diseases also declined dramatically during this period among men. Among women, the rate of daily smokers increased from 12 percent to 20 percent from 1960 to 1973. In the years after the antismoking measures took effect in 1975, this rate of increase at first leveled off, then slightly decreased, but rose again after 1985 to remain at 20 percent. Lung cancer rates among women increased during the study period, but the rate of increase lowered in the 1980s.

In 2003, the CDC released *The Second National Report on Environmental Chemicals*. The report found that serum cotinine levels in U.S. nonsmokers, "compared with levels measured during the period 1991-1994 for nonsmokers, decreased 58 percent for children, 55 percent for adolescents, and 75 percent for adults. These declines support the effectiveness of public health efforts to reduce environmental tobacco smoke (ETS) exposure during the 1990s." However, even with this reduction in exposure, the current estimate is that in the United States SHS still causes over 35 thousand deaths from coronary heart disease each year.

The United States Surgeon General has concluded that exposure to SHS is a common public health hazard that is completely preventable. Exposures can be dramatically reduced by eliminating smoking in all enclosed public places and workplaces and by encouraging smokers to adopt smoke-free rules in their homes and cars.

HPC notes, since the start of the year, the Utah, Indiana, North Dakota, South Dakota, Nebraska and Rhode Island Legislatures have introduced similar bills controlling locations of permitted second hand smoking (Source: <http://www.protectlocalcontrol.org/>).

PED notes the Pro-Children Act of 1994 provides that no person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for the provision of routine or regular kindergarten, elementary or secondary education or library services to children. The definition of "person" includes any state or local subdivision thereof. "Indoor facility" is defined as a building that is enclosed. The Pro-Children Act further prohibits smoking in any indoor facility or portion thereof in health or daycare or early childhood development (Head Start) operated by federal agencies, whether directly or by contract. This bill, if enacted, would appear to expand the federal prohibition to include the prohibition of smoking near entrances, windows and ventilation systems if school buildings and school campuses are deemed public places, and will require the posting of signs designating that smoking is prohibited.

PED also notes 6.12.4 NMAC requires that each local school board implement a policy that prohibits tobacco use by students, staff, parents and school visitors in school buildings, on school property and for students at school functions away from school property. The rule further re-

quires that each school district develop procedures for communicating the policy to students, school staff, parents, school visitors and the community. Opinion of the Attorney General 94-03 addresses whether the former State Board of Education and local school boards had the authority to ban smoking on public school campuses if they choose. Noting the Clean Indoor Air Act in effect at the time of the opinion, the opinion concluded that notwithstanding the legality of smoking-permitted areas for adults in public school buildings under state law prior to the Pro-Children Act of 1994 taking effect, the State Board of Education had the constitutional authority to chose to ban smoking for both adults and minors in public school buildings and campuses. The Secretary of Education would have similar authority in accordance with the provisions of the Public Education Department Act.

KBC/sb:yr