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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/06

SPONSOR     Martinez     LAST UPDATED                      HB                     

SHORT TITLE     Espanola-Area Health Care & Drug Prevention     SB     298    

ANALYST     Lewis    

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	175.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Similar to HB 588 (Chimayo Health & Mental Health Services).

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Department of Health (DOH)  
 Health Policy Commission (HPC)  
 Attorney General (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 298 appropriates \$175,000 from the general fund to the Public Health Division of the Department of Health to work with public and private agencies to provide faith-based health care, drug education and prevention programs and community development services in Chimayo and Espanola.

### FISCAL IMPLICATIONS

The appropriation of \$175,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund.

### SIGNIFICANT ISSUES

According to the Department of Health (DOH), Rio Arriba County has the highest combined al-

cohol and drug related death rate in the state. The drug related death rate in Rio Arriba County is almost twice the rate of any other county, almost three times the statewide rate, and six times the national rate. According to Epidemiology data, much of the problems faced by Rio Arriba County are concentrated in Espanola and Chimayo.

The services funded by this appropriation are currently a part of the DOH base in the executive budget recommendation, but are limited to substance abuse prevention with a total allocation of \$19,000 for faith-based services in Chimayo and Espanola. The department currently provides funding for the New Mexico Access to Recovery (ATR) program that includes faith-based clinical and recovery support services in Santa Fe, Dona Anna and Bernalillo counties. The funding for this program is supported with \$7,000,000 in federal funds.

DOH notes that it is imperative that all services meet best practice standards including evaluation and implement evidence-based culturally relevant services. In addition, faith-based providers must comply with all relevant federal and state service requirement/laws.

According to the Health Policy Commission (HPC), ArribaCare, a project established to address barriers to access to healthcare in Rio Arriba County, reports that Rio Arriba has achieved notoriety nationally for having one of the highest drug-related death rates in the nation, with heroin and cocaine use reaching epidemic proportions, according to hospital admission statistics. Death rates from alcohol-related causes (alcoholism, liver disease, and auto accidents) are also among the highest in the nation. The standardized mortality ratio for cirrhosis of the liver is twice the New Mexico average and three times the national average.

The HPC asserts that faith-based health care utilizes volunteer and professional resources to provide multi-healthcare and social services and programs for their communities, but does not necessarily promote religion as its primary criteria for participating in those services or programs. The HPC adds that, although there is controversy regarding the intent of faith-based services and organizations, the Health Resources and Services Administration (HRSA) has partnered with community-based and faith-based organizations for the provision of local services.

### **Constitutional issues:**

However, according to the Attorney General's Office (AGO), SB 298 raises serious and substantial federal and state constitutional questions. SB 298 implicates (1) the Establishment Clause of the First Amendment and (2) N.M. Const. art. IV, § 31.

#### **1. Establishment Clause of the First Amendment**

A direct or indirect appropriation to faith-based entities implicates the First Amendment Establishment Clause. First Amendment Establishment Clause inquiries involve a three-prong test. The governmental action (1) must have a secular legislative purpose, (2) the primary effect must be one that neither advances nor inhibits religion, and (3) the action must not foster an excessive government entanglement with religion. *Lemon v. Kutzman*, 403 U.S. 602, 512-13 (1971). SB 298 probably could be challenged under all three aspects of the test.

(1) First, lack of secular legislative purpose will invalidate governmental action as a violation of the Establishment Clause. The motivation behind the governmental action must be secular. It is appropriate to ask what is the actual purpose of the legislation. While the legislative purpose of

providing aid to agencies that provide drug education and prevention is secular, SB 298 specifies that the appropriation is to provide services through funding “faith-based” entities. The Department of Health is charged with providing services related to the public health of the people of the state, and the Legislature already appropriates millions of dollars for this purpose. Making a specific appropriation to faith-based entities is contrary to the position that SB 298 has a secular legislative purpose because there is no particular reason for SB 298 unless the purpose and intent is other than secular.

(2) Second, the principle or primary effect of the government action must not be to endorse or inhibit religion. By making an express statement that the appropriation is to fund “faith-based” entities, it is hard to defend SB 298 as neutral legislation. The question is whether the governmental action promotes religion. Symbolic benefit to religion is enough; it “need not be material and tangible advancement.” *Friedman v. Bd. of County Comm'rs of Bernalillo County*, 781 F. 2d. 777, 781 (10th Cir. 1985). Because SB 298 specifies funding to DOH for faith-based entities, it is difficult to see how SB 298 does not promote religion.

(3) The third test is that the governmental action must not foster an excessive government entanglement with religion. Although the “excessive entanglement” test will be determined according to the facts of the specific government action, programs that involve vulnerable populations are usually highly regulated by state agencies. Public funding of these services typically involve outcome results measures and other oversight responsibilities. The public funding source frequently analyses service delivery models to determine program effectiveness and cost benefits. The programs usually involve compliance with minimum program criteria for services, minimum qualifications for service providers, and periodic fiscal and program audits. Budget and program oversight mechanisms are routine. It would be unusual for a government agency to fund a service in such a sensitive area and not mandate minimum reporting requirements and possible on site visits, especially for residential programs. Funding of faith-based programs to provide health care could very likely involve government intrusion into all aspects of the funded programs sufficient for a court to find excessive government entanglement in religion.

2. N.M. Const. art IV, § 31.

Art. IV, § 31 states in pertinent part: “No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state....” Although the appropriation is identified as going to DOH, a state agency, SB 298 expressly mandates that DOH fund “faith-based health care” related to drug education and prevention. A valid constitutional challenge may be raised on the theory that SB 298 attempts to do indirectly (make an appropriation to private entity not under the absolute control of the state) that it cannot do directly. This indirect appropriation to private entities may be held by a court to be a violation of N.M. Const. art. IV, § 31.

## **ADMINISTRATIVE IMPLICATIONS**

DOH notes that the purchase of all behavioral health services is overseen by the Behavioral Health Collaborative, and it is likely that the appropriation would go to the statewide entity (Value Options) for administration and implementation purposes.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The HPC notes that SB 298 is a companion bill to HB 588, and that the house bill specifies that “the appropriation shall go to drug prevention efforts coordinated with public and private agencies at the John Hyson family resource center in Chimayo.” The appropriation of \$175,000 is the same in both bills.

Although HB 588 does not reference faith-based programs or services per se, the John Hyson Family Resource Center houses Interfaith LEAP, a collaboration between the Santa Fe Presbytery, Catholic Charities, District II of the Public Health Department and 15 congregations that want to combat alcohol and drug abuse in the area.

**AMENDMENTS**

DOH recommends a technical amendment as follows:

On Page 1, line 18 replace the words “public health division” with “behavioral health services division”.

ML/nt