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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/10

SPONSOR     Roch     LAST UPDATED                      HB   88  

SHORT TITLE     Agency Noncompliance with Unfunded Mandates     SB                     

ANALYST     Wilson    

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	(\$500,000.0-- \$1,000,000.0)	(\$500,000.0-- \$1,000,000.0)	(Recurring)	All Funds with federal funding and federal mandates

(Parenthesis ( ) Indicate Revenue Decreases)  
Relates to SJR 3

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$1,000.0- \$3,000.0	\$500.0- \$1,000.0		Recurring	All Funds with federal funding and federal mandates

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Children Youth & Families Department (CYFD)  
 Department of Agriculture (DA)  
 Department of Health (DOH)  
 Department of Public Safety (DPS)  
 Education Department (ED)  
 Higher Education Department (HED)  
 Homeland Security & Emergency Management (HSEM)  
 Human Services Department (HSD)  
 Livestock Board (LB)  
 Office of the State Engineer (OSE)  
 Public Education Department (PED)

## **SUMMARY**

### Synopsis of Bill

House Bill 88 requires state agencies to review all federal mandates that the agency is required to administer or enforce and for which federal funding is not available. The bill requires a state agency to not comply with any federal mandate for which federal funding is unavailable.

## **FISCAL IMPLICATIONS**

This bill will have very significant negative fiscal impact on the State. The federal government provides funds to administer many programs within the state that are crucial to protecting human health, safety, and the environment. These federal funds support overall program outcomes, and are in many cases earmarked for specific actions. This bill will affect all agencies receiving federal funding.

## **SIGNIFICANT ISSUES**

The AGO states that the provisions of this bill will require state agencies to refuse to follow federal law thereby subjecting the agency to penalty and enforcement proceedings by the federal government. Each law identified as having an “unfunded mandate” may have differing penalties for noncompliance in addition to the penalty of a court mandamus to the state to administer or enforce the federal law.

The AGO notes the Supremacy Clause of Article VI of the United States Constitution provides the federal government with the power to preempt state laws. If passed, this bill will conflict with federal laws that require the state agencies to administer or enforce them, invoking the supremacy clause. A Court could invalidate this bill, if enacted, pursuant to the supremacy clause.

DOH receives federal funding to administer a variety of programs that may be perceived as having unfunded federal mandates. For many programs, federal funding is essential in striving to meet the health needs of New Mexicans. When applying for federal funding, programs determine whether the funding provided will be sufficient to meet federal requirements, and to what degree existing resources can also be used. If a need arises that was not in the initial grant allocation, programs can negotiate with their federal project officer to reallocate budget or reassess priority activities.

DPS states this bill seeks to prohibit the state from using state revenues to comply with federal laws. As written, the law is vague as to what federal laws are defined as unfunded mandates because the term is ambiguous. Some programs such as string-attached programs, grants-in-aid programs, such as Medicaid are not mandates. States can refuse federal funding and decline to participate in the programs. Federal laws that are truly unfunded mandates, such as the Clean Water Act or the American’s with Disabilities Act provide for enforcement and penalties through the courts for non-compliance. Historically, states have challenged unfunded mandates under the Tenth Amendment and have not been very successful.

The federal government has recognized the problem of unfunded mandates. In the 1990s Congress passed legislation to limit unfunded mandates. The legislation curbs the federal government's power to require state and local governments to undertake major new programs without providing the funding for those programs. Under the new law Congress must either pay for any newly mandated programs or identify a federal agency charged with reducing or eliminating the mandate requirements if Congress fails to provide full financing or cast a separate vote indicating its intent to impose an unfunded mandate.

ED provided the following:

The State will be prohibited from implementing the federal program on its own. Programs that have already been granted state primacy by the federal government that will be eliminated all or in part include hazardous and solid waste management programs, drinking water protection, Superfund, air quality protection, occupational health and safety, petroleum storage tanks, and radiation protection. Most of these programs will be “taken over” by the federal Environmental Protection Agency (EPA), putting New Mexico businesses under the regulatory umbrella of the federal government in Dallas that does not have the depth of technical expertise and an understanding of local issues, concerns and fiscal limitations faced in our communities. Some programs will not be replaced by federal program, and will disappear altogether.

If approved, HB 88 will set back years of progress in the protection of groundwater and public health via implementation of cost-effective implementation of lined landfills, closure of unlined dumps, illegal dumping cleanups, implementation of waste reduction and recycling programs, removal and replacement of leaking underground petroleum storage tanks, and proper management of hazardous wastes, to name a few examples. Approval of this bill will also have the unintended consequence of lowering the quality of life for the majority of residents of New Mexico. Residents of New Mexico will lose the opportunity for meaningful participation and comments during rule making processes which could lead to proliferation of polluting facilities in communities that already bear a heavy environmental burden.

OSE notes that they regularly interact and enter into agreements with federal agencies, such as the U.S. Bureau of Reclamation and U.S. Army Corps of Engineers, relating to compact management, water deliveries, water rights settlements, flood control, water planning and water related endangered species issues. Many of the agreements contain cost share provisions. As a general rule, the agreements are meant to benefit the State of New Mexico and its citizens as well as the federal government. If this bill passes and the above types of agreements are determined to be subject to the new statute, the OSE will not be able to provide cost share. As a result, projects that benefit New Mexico and its citizens may not be conducted. Specific examples of concern are projects like the Elephant Butte Reservoir pilot channel that aids New Mexico in meeting its Rio Grande compact delivery requirements and the various proposed levee projects in the Middle Rio Grande that, when built, will better protect New Mexicans from river flooding and reduce flood insurance costs for people living in the valley.

### **ADMINISTRATIVE IMPLICATIONS**

In the short run state agencies will need resources to determine what costs are associated with each law.

In the long run the state could lose many programs causing personnel layoffs.

**RELATIONSHIP**

SJR 3 proposes an amendment to article 4 of the constitution of New Mexico to limit the legislature's ability to increase state expenditures. This could further restrict an agencies ability to secure federal funds.

**POSSIBLE QUESTIONS**

DOH asks whether a state agency could expend any state funds for the enforcement or administration of the provision of federal law if the costs are partially paid by federal funds.

DW/svb