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FISCAL IMPACT REPORT

SPONSOR Anderson ORIGINAL DATE 02/18/11
LAST UPDATED _____ HB 399
SHORT TITLE Bathroom Access Act SB _____
ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Medical Board (MB)
Governor's Commission on Disability (GCD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 399 (HB399) proposes to require a retail establishment that does not have an immediately accessible public restroom, but that has a restroom facility for its employees, to allow a customer with an eligible medical condition to use the employee restroom during normal business hours. Evidence of the customer's eligible medical condition would be provided either with a signed statement from a health professional or with an identification (ID) card issued by a nationally recognized health organization or a local health department. A retail establishment would not be required to make any physical changes to an employee restroom facility pursuant to HB399. Provisions for waiving civil liability and defining penalties would be established. The effective date would be July 1, 2011.

FISCAL IMPLICATIONS

HB399 contains no appropriation.

SIGNIFICANT ISSUES

The Department of Health indicates HB399 defines “eligible medical condition” as “Crohn’s disease, ulcerative colitis, irritable bowel syndrome or any other permanent or temporary medical condition that requires immediate access to a restroom facility.” The American Restroom Association, (ARA) (<http://americanrestroom.org/>), which advocates for the availability of clean, safe, well-designed public restrooms, has developed a comprehensive list of conditions that can lead to “restroom duress” when adequate facilities are not readily available. The National Institutes of Health notes that “Medical evidence also shows that health problems, including constipation, abdominal pain, diverticuli, and hemorrhoids, can result if individuals delay defecation” (Source: National Institutes of Health (NIH) Publication No. 95-2754, July 1995 [29 CFR 1910.141\(c\)\(1\)\(i\)](#)).

ADMINISTRATIVE IMPLICATIONS

The Department of Health indicates under the provisions of HB399 its staff could be required to determine eligibility and issue ID cards. Given that eligibility would be contingent on the presence of an “eligible medical condition,” some level of administrative medical oversight would be required. It may be difficult for the Department of Health to develop a system for determining eligibility and issuing ID cards.

The AODA indicates any additional fiscal or administrative impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions.

OTHER SUBSTANTIVE ISSUES

DOH indicates by requiring evidence of an eligible medical condition, HB399 may not benefit visitors to New Mexico, who cannot be expected to have the necessary identification or paper work. Similarly, HB399 would not benefit someone experiencing a bad reaction from recently eaten food.

RAE/svb