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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/17

SPONSOR Trujillo, CA LAST UPDATED _____ HM 55

SHORT TITLE LFC Regulatory Policy Guidelines SB _____

ANALYST Clark

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY17 | FY18 | FY19 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|---------|---------|------|-------------------|---------------------------|-------------------------------|
| Total | Minimal | Minimal | | Minimal | Nonrecurring | Legislative Finance Committee |

Parenthesis () indicate expenditure decreases

Relates to HB58

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
 Economic Development Department (EDD)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Office of the Attorney General (OAG)
 Commission of Public Records (CPR)

SUMMARY

Synopsis of Bill

House Memorial 55 requests the Legislative Finance Committee (LFC) to develop regulatory policy principles to review bills impacting the regulatory environment in New Mexico in order to ensure proposed legislation does not unreasonably burden economic growth in the state. As basis for this request, the memorial relays constituent feedback legislators have received regarding regulatory burden and timelines for compliance as well as the role that statutory changes can make in resolving regulatory issues.

FISCAL IMPLICATIONS

There will be a minimal operating budget impact for the staff time involved with developing the proposed regulatory policy principles.

SIGNIFICANT ISSUES

See “Alternatives” for a proposed method of implementing regulatory policy principles on a statewide basis.

LFC staff adopted a set of tax policy principles (shown below) several years ago and use these principles when analyzing tax bills.

Does the bill meet the Legislative Finance Committee tax policy principles?

- 1. Adequacy:** Revenue should be adequate to fund needed government services.
- 2. Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
- 3. Equity:** Different taxpayers should be treated fairly.
- 4. Simplicity:** Collection should be simple and easily understood.
- 5. Accountability:** Preferences should be easy to monitor and evaluate

In 2016, LFC staff also developed a new set of tax *expenditure* policy principles to use when evaluating certain tax exemptions, deductions, and credits. These are shown below.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

- 1. Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
- 2. Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
- 3. Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
- 4. Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
- 5. Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
- 6. Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

Just as these principles are useful when evaluating proposed legislative changes to the tax code, a set of regulatory principles could be useful when evaluating proposed legislative changes to regulations. However, it is important to note many regulations are a result of agency rulemaking, and regulations in statute may be too broad to adequately evaluate in a way similar to current evaluations of tax proposals. Additionally, the extremely wide array of potential industry regulations would require substantial regulatory knowledge specific to each industry – knowledge broader than that required to review most tax proposals and knowledge that may be limited outside industry representatives and staff of the relevant agencies.

The New Mexico Environment Department (NMED) provided the following analysis.

While significant issues cannot be concretely identified until the policy principles are drafted, NMED is concerned LFC may not have all of the necessary information to either adequately draft or implement such principles. NMED certainly recognizes LFC's expertise and authority in budgetary matters, but many of NMED's programs that the policy principles could impact are also governed by stringent and complex federal requirements. As the designated state agency for numerous federal compliance and funding programs, NMED is in direct and constant communication with the United States Environmental Protection Agency, U.S. Department of Labor, and the Nuclear Regulatory Commission on such programs and is in the unique position of being able to offer advice on federal impacts. NMED is routinely in receipt of federal notices requiring changes to rules and, in some cases, statutes to maintain compliance with federal directives.

Additionally, rulemaking boards, commissions and agencies, such as the Water Quality Control Commission, are required to consider both the economic value as well as the economic reasonableness of specific rulemakings. See NMSA 1978, § 74-6-4(E). Such economic considerations by rulemaking boards, commissions and agencies get to the more technical and specific level of regulations rather than the more general grant of rulemaking authority in most statutes.

The Economic Development Department (EDD) provided the following analysis.

Some regulatory oversight is necessary and criteria should be developed to assist in determining whether a regulation is unreasonably burdensome. Reasonableness is necessarily a subjective term and certain regulations are necessary to protect the public health, safety, and welfare.

Business organizations and associations have expressed concerns with the ever increasing burden of regulation. Applying broad generalizations to rule making to the regulatory burden would benefit many businesses. It may be difficult to find a general set of guidelines or policies that fairly represent the very divergent regulatory arenas. Reducing regulatory burden is a worthwhile goal.

The memorial language does not include any of the rule making agencies. In developing regulatory policy principles, it would be helpful to involve the agencies who currently regulate business.

The Small Business Regulatory Act (Section 14-14A-5 NMSA 1978) already exists in New Mexico statute. This statute creates the Small Business Regulatory Advisory Commission. The commission has appointed members and reviews rules proposed by rule making agencies and reports if the rules have a negative effect upon small businesses.

PERFORMANCE IMPLICATIONS

Adoption of a set of uniform regulatory policy principles when implementing and administering regulations in statute and rule might improve customer-facing agency performance and improve the business regulatory climate in the state.

ADMINISTRATIVE IMPLICATIONS

There will be an administrative impact to LFC and other agencies to develop the proposed regulatory policy principles.

RELATIONSHIP

This memorial relates to HB 58, which provides a detailed, uniform process for state agencies to follow in adopting rules.

ALTERNATIVES

The memorial could propose a set of regulatory policy principles for agencies to use when considering and implementing regulations created or amended through agency rule-making. This could have a greater impact on resulting regulations than only inclusion of such principles in fiscal impact reports prepared by LFC staff.

JC/sb/jle