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## FISCAL IMPACT REPORT

SPONSOR Schmedes ORIGINAL DATE 02/17/21  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Eliminate Sec. of Health Powers SB 238/ec  
ANALYST Glenn

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB139, HB159, SB74, SB 171

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Department of Health (DOH)

Office of the Attorney General (NMAG)

### **SUMMARY**

#### Synopsis of Bill

Senate Bill 238 eliminates the authority of the secretary of the Department of Health under the Public Health Emergency Response Act (PHERA) to isolate or quarantine a person who is unwilling or unable to undergo vaccination for reasons of health, religion or conscience.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

### **FISCAL IMPLICATIONS**

No fiscal implications of SB238 were noted.

## **SIGNIFICANT ISSUES**

DOH explains that, during a public health emergency, PHERA permits the secretary of the Department of Health to authorize the administration of vaccines to prevent infection by protect against the spread of a threatening communicable disease. Section 12-10A-13 NMSA 1978 PHERA authorizes DOH to isolate or quarantine a person who is unable or unwilling for reasons of health, religion or conscience to undergo vaccination. Similarly, PHERA authorizes DOH isolate or quarantine a person who is exposed to or infected with a threatening communicable disease and is unable or unwilling, for reasons of conscience, to undergo treatment.

DOH also explains that PHERA includes detailed procedures to protect the rights of a quarantined or isolated person. DOH must apply for and obtain a written, ex parte order from a court that authorizes the isolation or quarantine. The order can only be issued upon a court finding that clear and convincing evidence exists to believe isolation or quarantine is warranted to respond to the public health emergency. Isolation or quarantine must be accomplished by the least restrictive means necessary to protect against the spread of a threatening communicable disease and can include confinement to a private home or other private or public premises. A person who is isolated or quarantined under an ex parte order may petition the court to contest the order or for remedies regarding treatment or the terms and conditions of the isolation or quarantine. See Sections 12-10A-7 to -8.

Because DOH generally cannot compel the vaccination of adults, DOH contends that it needs other measures to protect against the spread of a threatening communicable disease. During the ongoing declared public health emergency concerning Covid-19, DOH has relied primarily on public health orders mandating social distancing, mask wearing and limitations on gatherings to control the spread of the virus, and does not anticipate pursuing isolation or quarantine of individuals who refuse to undergo vaccination against Covid-19. Nevertheless, it is important that the department retain the ability to isolate or quarantine someone on the basis that the person refuses to be vaccinated against a threatening contagious disease. If a future public health emergency arose involving a highly virulent and deadly disease, the department would need every tool at its disposal to limit the spread of that contagion. In such a scenario, DOH's lack of authority to seek isolation or quarantine for a person who refuses vaccination could have significant negative consequences for the health and safety of the public.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB238 relates to the following bills that also address public health emergencies: HB139 Leg. Oversight of Emergency Declarations; HB159 Rulemaking During Public Health Orders; SB74 Public Health Order Termination & Renewal; SB171 On-Campus Ed. in Public Health Emergency

BG/sb