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FISCAL IMPACT REPORT

ORIGINAL DATE 2/4/08

SPONSOR HBIC LAST UPDATED _____ HB 310/HBICS

SHORT TITLE Regulatory Impact Statement Requirements SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$10 .0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Significant	Significant		Recurring	General Fund and others

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB57, SJR5, SJR7 and SM53

SOURCES OF INFORMATION

LFC Files

Responses Received

Adult Parole Board (APB)
 Department of Information Technology (DoIT)
 Department of Transportation (DOT)
 Finance Authority (FA)
 General Services Department (GSD)
 Health Policy Commission (HPC)
 New Mexico Military Institute (NMMI)
 San Juan College (SJC)
 Sentencing Commission (SC)
 Tourism Department (TD)
 Workers' Compensation Administration (WCA)
 Workforce Solutions (WS)

House Bill 310/HBICS– Page 2

Responses Received on Original Bill From

Office of African American Affairs (AAA)
Administrative Office of the Courts (AOC)
Aging & Long-Term Services Department (ALTSD)
Attorney General’s Office (AGO)
Bernalillo County Metro Court (BCMC)
Board of Examiners for Architects (BEA)
Central New Mexico Community College (CNM)
Children, Youth & Families Department (CYFD)
Commission of Public Records (CPR)
Corrections Department (CD)
Department of Agriculture (DA)
Department of Finance & Administration (DFA)
Department of Health (DOH)
Department of Information Technology (DoIT)
Department of Military Affairs (DMA)
Department of Public Safety (DPS)
Developmental Disabilities Planning Council (DDPC)
Economic Development Department (EDD)
Environment Department (ED)
Energy, Minerals & Natural Resources (EMNRD)
Finance Authority (FA)
Game & Fish Department (GFD)
Gaming Control Board (GCB)
General Services Department (GSD)
Higher Education Department (HED)
Human Services Department (HSD)
Labor Department (LD)
Medical Board (MB)
Mortgage Finance Authority (MFA)
New Mexico Highlands University (NMHU)
New Mexico Military Institute (NMMI)
Office of African American Affairs (OAAA)
New Mexico Mortgage Finance Authority (OSA)
Office of the State Engineer (OSE)
Office of Indian Affairs (OIA)
Public Education Department (PED)
Public Regulation Commission (PRC)
Public School Insurance Authority (PSIA)
Regulation & Licensing (RLD)
San Juan College (SJC)
Secretary of State (SOS)
State Land Office (SLO)
State Personnel Office (SPO)
Treasurer’s Office
Veterans’ Services Department (VSD)

SUMMARY

Synopsis of Bill

The House Business and Industry Committee substitute for House Bill 310 appropriates \$10,000 from the general fund to the state commission of public records for expenditure in fiscal year 2009 to establish a filing system for regulatory impact statements.

The substitute bill requires an agency to prepare a draft regulatory impact statement on any proposed rule and make the document available for public inspection during office hours.

At the end of rulemaking procedures and upon filing a rule, an agency shall prepare a final regulatory impact statement and file the final regulatory impact statement with the records center.

The regulatory impact statement (RIS) means a document for informational purposes only. It must contain the following:

- a summary of the rule;
- a description of any person, resources, classes of persons and political subdivisions that will be affected by the rule;
- the probable negative and positive impacts, including the economic, social, environmental and any other relevant impacts, of a rule on affected persons, resources, classes of persons and political subdivisions;
- a comparison of the costs and benefits of a rule to the costs and benefits of inaction;
- the probable negative or positive impact to the state general fund, the state budget and any state special fund of taking the intended action;
- a statement on whether there are means for achieving the purpose of the rule with fewer adverse effects; and
- a summary of public comments or other evidence submitted during rulemaking;

Unless otherwise provided in the State Rules Act, no rule shall be valid or enforceable until the rule and the final regulatory impact statement are filed with the records center, and the rule is published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register.

Emergency rules may go into effect immediately upon filing with the records center, but emergency rules shall be effective no more than thirty days unless emergency rules are published in the New Mexico register and a final regulatory impact statement is filed with the records center.

A regulatory impact statement is not required for an order or statement of policy. The Public Regulation Commission is also exempted from the provisions of this bill.

If an agency is unable to complete all or part of a regulatory impact statement due to hardship, including lack of agency resources or unavailable information, the agency shall indicate the reason for the hardship in lieu of completing all or part of the regulatory impact statement.

The state records administrator shall maintain and make available to the public a list of all regulatory impact statements filed with the records center and any notices of exemption. The state records administrator shall also maintain and file the original copy of any regulatory impact statement as a permanent, public record. The state records administrator shall provide the list of all regulatory impact statements filed with the records center on July 1 of each year to the governor, the president pro tempore of the senate and the speaker of the house for distribution to the appropriate standing or interim legislative committee.

FISCAL IMPLICATIONS

The appropriation of \$10,000 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall revert to the general fund.

The AOC states there are no fiscal implications anticipated for the judiciary if this bill is enacted. Although the judiciary does issue court rules, the judicial branch of government, along with the legislative branch, is specifically excepted from the State Rules Act.

DFA notes the fiscal impact of this bill on rule-filing agencies is indeterminate. It will create additional work for agencies in their rulemaking activities and will require more materials to be published in the New Mexico Register.

Currently, only the Taxation and Revenue Department regularly publishes its proposed rules. While other agencies may occasionally elect to publish their proposed rules, most routinely only publish the notice of intended rulemaking and the final, adopted rules.

DFA states that if agencies are required to publish proposed rules along with their impact statements, the publication costs to most agencies could effectively more than double. The impact on the Commission of Public Records likewise will increase proportionately.

CPR noted the bill will impact the CPR directly by requiring impact statements to be filed with certain rules. The bill also requires the State Records Administrator to provide annual cumulative summaries of all filed impact statements. Both of these requirements are new for the agency and will necessitate an increase in staff. The impact statements will also be published in the New Mexico Register which will increase the labor necessary to produce and proof that publication.

RLD says the fiscal impact on state agencies is too high to quantify or identify. The additional costs will include staff time and resources for every agency to research and then complete a regulatory impact statement each time a rule is considered, changed, or adopted.

HSD states that if the rulemaking agencies are intended to pay for the costs of publishing the regulatory impact statements in the State Register in FY 08 and after FY 09, there will have to be an additional appropriation to HSD and other rulemaking agencies to defray the extra publication costs. This budgetary impact is expected to be great but cannot be quantified with any precision because HSD has no experience in predicting the length of an impact statement. At present, the charges to publish in the New Mexico Register are \$1.50 per columnar inch.

The SOS claims this bill creates an unfunded mandate on state agencies when the significant and complex extra work required by this bill is performed prior to promulgating new rules.

SIGNIFICANT ISSUES

An agency shall prepare the regulatory impact statement in the format and style established by the state records administrator. One of the purposes of this bill is to create a template for a regulatory impact statement so that there will be a check list for the agencies to follow.

GSD notes that preparing a regulator impact statement with the information required by this bill will be costly in state funds and/or staff time. Given this, the requirement of such an extensive regulatory is an unfunded mandate to state agencies. This is recognized by the Section 4 of HB 310 waiver given to agencies that are unable to fund or do not have the in-house resources to complete a regulatory impact statement. The extensive regulatory impact statement required by the substitute could hamper the ability of agencies to carry out their statutory duties resulting in a de facto repeal or partial repeal of their enabling statutes without legislative approval. If this is not to happen, increased funding will be necessary to allow agencies to complete without impacting their ability to perform what is required of them under law.

The AGO questions whether the additional bureaucratic reviews required by this bill are warranted since all of these regulatory and economic impact considerations can all be considered under current law and the full opportunity for public comments that is already provided in current law.

RLD raised the following issues:

Agencies may be hindered in protecting the public in order to complete regulatory impact statements. All state agencies that promulgate rules will be impacted when rules change or when new rules are adopted.

It appears that the assumed intent behind the proposed legislation in protecting the public during the rulemaking process is already encompassed with the current requirements for public hearings and by having an opportunity to make public comments or submit comments in writing during the rule promulgation process. Additionally, the legislature that created the professional licensing board or enabled the state agency to promulgate rules, maintains authority to eliminate or change the enabling statute to protect the professional licensee or the public.

Requiring agencies to complete an additional regulatory impact statement will be extremely burdensome and costly.

The OSE notes the following:

Regulatory agencies are charged with the responsibility of regulating through various means such as rules, regulations, policies, procedure. Procedures for promulgating rules and regulations are well established and provide for substantial public notice and input. The established promulgation processes provide an extensive opportunity for the public to comment on the economic impact as each person or group sees it.

This bill appears to require an expensive exercise of creating impact statements without them having any effect on the actual promulgation of a regulation.

Creating these new administrative steps for rulemaking will lead to years of litigation due to the vagueness of what is required for an agency to comply with this act. This bill appears to have no utility other than to burden agencies with an unnecessary expensive meaningless exercise.

HSD provided the following:

To comply with HB 310, the timeframe for promulgating HSD rules will be considerably extended. For example, HSD's Income Support Division estimates that the time required for rule promulgation will be an average of 5 to 7 months if the bill is enacted, in comparison with the 3 to 4 months under current law.

The increase in promulgation time caused by the bill's new requirements will also impact compliance with federal regulations as the studies into the fiscal impact may exceed the timeframe given by the federal government for implementation. HSD will be at risk of federal penalties or sanctions for such delays.

HSD programs are regularly affected by mandatory federal requirements imposed on HSD by federal law or rule and HSD is required to bring its rules into line with federal requirements. HSD must make such mandatory rule changes regardless of whether there are less costly or intrusive methods of achieving the proposed regulatory goal. Failure to promulgate mandatory rule changes could subject HSD to federal monetary sanctions or penalties.

ADMINISTRATIVE IMPLICATIONS

The CPR provided the following:

The bill requires that agencies file regulatory impact statements with the CPR in certain situations. This will affect the CPR as more staff will be required to handle this additional responsibility. The regulatory impact statements will also be published in the New Mexico Register which will increase the size of each issue and increase the staff time needed to produce and proof each issue. The bill also requires that the CPR maintain these records and provide for public inspection. This requirement will impose additional demands on already limited staffing resources as well as require additional physical space in the agency. The bill also requires the creation of annual summaries of all filed regulatory impact statements. This additional requirement will compete with the other tasks the CPR is already charged to complete.

The bill creates new documents to be filed with the CPR. This additional work load will have to be divided among current staff. A new position was authorized beginning in FY08; however, the added position only permits maintenance of current work loads. Even with the position, the staff in the agency is already taxed to the limits, so any additional work will necessitate additional staff if performance levels are not to be compromised.

HSD estimates that major program divisions will require at least 6.5 additional FTE's at a total cost of about \$508,300 in FY 09 alone to prepare the regulatory impact statements required by this bill. Additional staff will include two economists-- one for the income support and another for the medical assistance division who will be needed to work with all programs to do such things as identify the person or classes of persons currently enrolled and potential eligible persons that will be impacted and four management analysts one in each of the four program divisions.

RELATIONSHIP

HB 310/HBICS relates to:

SB 57, Regulatory Process Task Force appropriates \$150,000 from the general fund for FY08-FY11 to the Legislative Council Service to form a Regulatory Process Task Force comprised of 21 members whose activities include identifying the goals of a regulatory framework

SJR 5, and SJR 7, Legislative Review of Regulatory Rules, CA are proposed constitutional amendments which requires review and approval by the appropriate interim or standing committees of the legislature before regulatory rules proposed by state agencies or officers of the executive branch take effect.

SM 53, Create Interim Process & Law Committee

DW/mt:bb