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FISCAL IMPACT REPORT

SPONSOR Sanchez ORIGINAL DATE 03/13/21
LAST UPDATED _____ HB _____
SHORT TITLE Public Health Order Business Occupancy SB 364
ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 139, HB 159, SB 74, and SB 79

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Administrative Office of the Courts (AOC)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 364 (SB 364) would prohibit limiting a business to operate at less than 50 percent capacity during a public health emergency by adding new language to the Emergency Powers Code, Section 12-9B-1 NMSA 1978, and the Public Health Act, Sections 24-1-1 to 24-1-41 NMSA 1978, , and amending the Public Health Emergency Response Act (PHERA), Section 12-10A-1 to -19 NMSA 1978, .

For each of these sections, SB364 adds language stating an executive order or public health order “of general applicability throughout the state or a portion of the state that restricts business openings shall provide that a business may open and provide services for a minimum of fifty percent of the occupancy limit of that business established prior to the public health order pursuant to municipal, county or state fire codes or other municipal or county permitting ordinances.”

SB 364 provides an effective date of July 1, 2021.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

The New Mexico Attorney General reported, as with other restrictions on the governor’s ability to issue limitations on business operations during a public health emergency such as the pandemic, SB364 may be challenged on grounds that it intrudes on the governor’s ability to respond effectively to crises.

The Department of Health stated this bill contains no exceptions for extreme circumstances and would allow businesses to operate no matter how much risk the operation posed to the health and well-being of the community. The prohibition does not differentiate between essential or nonessential businesses, nor does it contain any kind of accommodation for various types of businesses; all businesses are treated the same under this bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 139 Leg. Oversight of Emergency Declaration
HB 159 Rulemaking During Public Health Orders
SB 74 Public Health Order Termination & Renewal
SB 79 Small Business Pandemic Takings Reparations

KK/sb