

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3-12-05 HB 354/HJCS/aHFI#1/aSCORC
 SHORT TITLE Prohibit Smoking in Certain Areas SB _____
 ANALYST Collard

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 515

Relates to HB 81, HB 290, HB 319, HB 452, SB 50, SB 56, and SB 389

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Administrative Office of the Courts (AOC)

Department of Health (DOH)

Health Policy Commission (HPC)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to House Bill 354 allows smoking in “an enclosed indoor workplace, other than a restaurant, that employs the services of five or fewer employees;”

Synopsis of the HFI#1 Amendment to the HJC Substitute Bill

The first House Floor amendment to the House Judiciary Committee Substitute to House Bill 354 makes the following change “a private residence except during hours of business operation while it is being used commercially to provide child care, adult care, or health care or any combination of the above;”

Synopsis of the HJC Substitute Bill

The House Judiciary Committee substitute for House Bill 354 proposes to amend the “Clean Indoor Air Act”, NMSA Sections 24-16-1 et seq. to prohibit smoking in most enclosed indoor workplaces, enclosed public places, and most means of public transit. It expands the current provisions of that Act to the private sector. This bill would require employees who are smokers to go outdoors, but would also prohibit smoking near doors, windows, or places near entrances or exits. Employers are required to designate smoking areas and post signs, with state or political subdivisions of the state included. Exceptions include certain stand-alone bars, casinos, tobacco stores, private clubs, facilities of a tobacco product manufacturer, and hotel rooms designated for smoking. The bill imposes penalties up to \$500 based upon the number of offenses. Employers won’t be penalized if they’ve posted the necessary signs, implemented appropriate policies, and advised persons who are in violation of the act. The bill also prohibits retaliation against those exercising their rights under the provisions of the act.

The major differences in the committee substitute to House Bill 354 from the original bill are:

- Section 4.A: provides that a private residence during hours of business operation while it is being used commercially to provide child care, adult care or healthcare or any combination of the above is a “smoking-permitted area” as defined in the Act
- Section 4.K: provides that enclosed areas within restaurants, hotel and motel conference or meeting rooms while these places are being used for private functions are smoking-permitted areas, as long as none of these areas are open to the general public while the private functions are occurring and provided that smoke does not infiltrate other enclosed indoor workplaces or public places where smoking is otherwise prohibited under the Clean Indoor Air Act
- Section 7.A and B: while the substitute requires the posting of both “No Smoking” and “Smoking Permitted” signs, it does not specify the form of the signs as do the original and amended HB 354.

Significant Issues

PED notes the following statistics:

- According to the National Cancer Institute, 53,000 nonsmoking Americans die each year from illnesses attributable to exposure to secondhand smoke, making it the third leading preventable cause of death after direct smoking and alcohol abuse.
- The New Mexico State Clean Indoor Air Act (1985) requires all policymakers of state, county and city-owned or leased buildings, including public schools and colleges, to adopt policies that address the health of non-smokers who visit or work in these public buildings. These policies may entirely prohibit smoking or they may allow smoking in certain areas. Since 1985, the New Mexico Clean Indoor Air Act has been amended to include a 100 percent smoke-free State Capitol and the Capitol North building, which is adjacent to the Roundhouse. Five counties have not enacted laws: Hidalgo, Luna, Mora, Rio Arriba and San Miguel.
- The state Clean Indoor Air Act does not limit local and county governing bodies from adopting more stringent regulations and, as a result, cities and counties have adopted regulations that prohibit smoking in public places and worksites.
- As of July 2003, only seven New Mexico communities have enacted laws to prohibit smoking beyond government buildings. Their laws address smoking near building en-

trances and inside public places and/or work places including restaurants, bars attached to restaurants and freestanding bars (in Doña Ana County only).

DOH indicates New Mexicans support smoke-free indoor air. Seventy-eight percent of New Mexicans believe that non-restaurant workplaces should be completely smoke-free and 65 percent of New Mexicans believe that restaurant workplaces should be completely smoke-free (NM Adult Tobacco Survey, 2003).

The primary purpose of enacting secondhand smoke (SHS) laws is to protect the public from exposure to human carcinogens. Secondhand smoke is classified as a Group A (Human) Carcinogen. There is no safe level of exposure for Group A toxins. (Environmental Health Information Service, 9th Report on Carcinogens, 2000). SHS is a cause of a number of different developmental, respiratory, and cardiovascular problems in adults and children. Some of these health problems include Sudden Infant Death Syndrome (SIDS); asthma and middle ear infection in children; lung, nasal, and sinus cancer; and heart disease deaths (National Cancer Institute, Health Effects of Exposure to Secondhand Smoke, 1999).

Comprehensive clean indoor air ordinances are effective in reducing exposure to secondhand smoke and can also help other tobacco users quit and reduce daily tobacco use (Morbidity and Mortality Weekly, A Report on Recommendations of the Task Force on Community Preventive Services, 2000).

PED indicates schools are required by regulation to be tobacco free and required by federal regulation to be drug free and are required by federal regulation to post drug-free school zone signs. These signs are not specific to tobacco.

PERFORMANCE IMPLICATIONS

AOC indicates FY05 is the second year that the courts are participating in performance based budgeting. This bill may impact the performance based budgeting measures identified for FY06, which may result in a need for additional resources. The courts' performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

FISCAL IMPLICATIONS

Although there is no appropriation considered with this bill, there is an unknown cost related to the purchase and posting of no smoking signs. Additionally, the state will collect revenue based on the penalties section of the bill as follows: \$100 for the first violation, \$200 for the second violation, and \$500 for every fine thereafter within a 12-month period.

ADMINISTRATIVE IMPLICATIONS

AOC indicates a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

DUPLICATION, RELATIONSHIP

House Bill 354 duplicates Senate Bill 515. Additionally, House Bill 354 relates to Senate Bill 56 and House Bill 452, which propose to change the requirements of cigarette tax stamps, licensing and reporting provisions for cigarette manufacturers and distributors; Senate Bill 50 and House Bill 81, both of which propose to repeal the cigarette tax increase; House Bill 319, which proposes to raise the tax on non-cigarette tobacco products; House Bill 290, which proposes to redistribute master settlement agreement payments into the Tobacco Settlement program fund; and Senate Bill 389, which proposes to prohibit smoking on public and private school campuses and at correctional facilities.

OTHER SUBSTANTIVE ISSUES

DOH state ensuring that public places and workplaces are smoke free is a CDC “best practice” and an evidence-based strategy. Multiple evidenced-based strategies must be implemented simultaneously for a tobacco control program to reduce the burden of tobacco on society and New Mexico taxpayers. This bill would advance the Tobacco Use Prevention and Control (TUPAC) program’s work in eliminating exposure to SHS in New Mexico. The Clean Indoor Air ordinances currently cover 42 percent of New Mexicans in the three most populated cities in New Mexico: Albuquerque, Las Cruces, and Santa Fe.

Nationwide, just 43 percent of the 6.6 million food preparation and service occupations workers are covered by smoke-free policies while over three-fourths of white collar workers are protected, including 90 percent of teachers. Discussions of SHS often focus on the health risk to patrons, but restaurant and bar employees’ exposure should be considered.

Levels of SHS in restaurants are about 160 percent to 200 percent higher than in offices that permit smoking and 150 percent higher than in a home with at least one smoker (Siegal, Journal of American Medical Association, Issue 271 no. 9, 1994). Most studies examining SHS exposure are based on home exposure; therefore the SHS health risk for hospitality workers is underestimated.

Long-term health problems caused by secondhand smoke exposure include lung cancer, heart disease, bronchitis, pneumonia, and eye and nasal irritation in adults. In addition to the long-term health problems resulting from secondhand smoke exposure, exposure to SHS for as little as five to 30 minutes can negatively impact your health (Glantz and Parmley, Journal of the American Medical Association, 2001).

Young children are particularly susceptible to secondhand smoke because their lungs are not fully developed. Childhood exposure to secondhand smoke is associated with an increased risk for sudden infant death syndrome (SIDS), chronic respiratory symptoms, middle ear infections, low birth weight, asthma, pneumonia, and bronchitis in young children (National Cancer Institute, Smoking and Tobacco Control, monograph 10, 1999).

Smoke-free laws either have no economic impact or have a positive impact on the economic health of businesses within the hospitality industry, according to scientific studies that analyzed the impact of smoke-free laws on businesses (Scollo, Lal, Hyland, Glantz, Tobacco Control, 2003). Experiences in other states demonstrate that smoke free measures have either had no effect or a positive effect on local economies. Many studies analyzing the economic impact of

smoke free measures concludes that business, bar, and tourism revenues are not negatively impacted by smoke free measures.

HPC notes there is a considerable amount of epidemiological literature and laboratory data on the mechanisms by which relatively small exposures to toxins in tobacco smoke seem to cause unexpectedly large increases in the risk of acute cardiovascular disease. "Exposure to secondhand smoke increases the risk of fatal and non-fatal coronary heart disease in non-smokers by about 30 percent. Because coronary heart disease is a leading cause of death in many countries, even relatively small increases in risk from this one factor can result in a large population burden of disease attributable to exposure to tobacco smoke." (*British Medical Journal*-Apr 2004)

Also, the results of the observational study in Helena, Montana are provocative: hospital admissions for acute myocardial infarction (heart attack) declined by about 40 percent during the six months in which a comprehensive local ordinance on clean air was in effect, and rebounded after the ordinance was suspended. (*British Medical Journal*-Apr 2004)

In another study to determine the effect of anti-smoking laws, researchers analyzed smoking prevalence from 1960 to 2000 and lung cancer incidence 20 years later from 1980 to 2000. They also looked at deaths caused by respiratory diseases, such as emphysema, from 1980 to 1998. The results appear in the December 2004 issue of the journal *Chest*. The study showed that daily smoking prevalence among men dropped from 58 percent in 1960 to 28 percent by 2000. Lung cancer rates had increased from 1965 to 1971, but they decreased steeply from 80 to 32 cases per 100 thousand men in 2000. The rate of deaths due to respiratory diseases also declined dramatically during this period among men. Among women, the rate of daily smokers increased from 12 percent to 20 percent from 1960 to 1973. In the years after the antismoking measures took effect in 1975, this rate of increase at first leveled off, then slightly decreased, but rose again after 1985 to remain at 20 percent. Lung cancer rates among women increased during the study period, but the rate of increase lowered in the 1980s.

In 2003, the CDC released *The Second National Report on Environmental Chemicals*. The report found that serum cotinine levels in U.S. nonsmokers, "compared with levels measured during the period 1991-1994 for nonsmokers, decreased 58 percent for children, 55 percent for adolescents, and 75 percent for adults. These declines support the effectiveness of public health efforts to reduce environmental tobacco smoke (ETS) exposure during the 1990s." However, even with this reduction in exposure, the current estimate is that in the United States SHS still causes over 35 thousand deaths from coronary heart disease each year.

The United States Surgeon General has concluded that exposure to SHS is a common public health hazard that is completely preventable. Exposures can be dramatically reduced by eliminating smoking in all enclosed public places and workplaces and by encouraging smokers to adopt smoke-free rules in their homes and cars.

HPC notes, since the start of the year, the Utah, Indiana, North Dakota, South Dakota, Nebraska and Rhode Island Legislatures have introduced similar bills controlling locations of permitted second hand smoking (Source: <http://www.protectlocalcontrol.org/>).

PED notes the Pro-Children Act of 1994 provides that no person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for the provision of routine or regular kindergarten, elementary or secondary education or library services to

children. The definition of “person” includes any state or local subdivision thereof. “Indoor facility” is defined as a building that is enclosed. The Pro-Children Act further prohibits smoking in any indoor facility or portion thereof in health or daycare or early childhood development (Head Start) operated by federal agencies, whether directly or by contract. This bill, if enacted, would appear to expand the federal prohibition to include the prohibition of smoking near entrances, windows and ventilation systems if school buildings and school campuses are deemed public places, and will require the posting of signs designating that smoking is prohibited.

PED also notes 6.12.4 NMAC requires that each local school board implement a policy that prohibits tobacco use by students, staff, parents and school visitors in school buildings, on school property and for students at school functions away from school property. The rule further requires that each school district develop procedures for communicating the policy to students, school staff, parents, school visitors and the community. Opinion of the Attorney General 94-03 addresses whether the former State Board of Education and local school boards had the authority to ban smoking on public school campuses if they choose. Noting the Clean Indoor Air Act in effect at the time of the opinion, the opinion concluded that notwithstanding the legality of smoking-permitted areas for adults in public school buildings under state law prior to the Pro-Children Act of 1994 taking effect, the State Board of Education had the constitutional authority to chose to ban smoking for both adults and minors in public school buildings and campuses. The Secretary of Education would have similar authority in accordance with the provisions of the Public Education Department Act.

KBC/rs:rs