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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/09

SPONSOR Picraux LAST UPDATED \_\_\_\_\_ HB 545

SHORT TITLE Medical Examiner Act SB \_\_\_\_\_

ANALYST Haug

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	0.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Public Safety (DPS)  
 University of New Mexico (UNM)  
 Department of Health (DOH)  
 Higher Education Department (HED)  
 Indian Affairs Department (IAD)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 545 would create the Board of Medical Examiners (the composition of which is identical to that of the Board of Medical Investigations), and the Office of the Chief Medical Examiner. It would establish qualifications for the Office and its medical personnel establish fees associated with providing services, and provide for the powers and duties of the Office. The bill would also establish a statewide medical and legal death investigation system, facilitate the transfer of records from the Office of Medical Investigator to the newly created Office, and prescribe penalties for violations of the Act.

The Chief Medical Examiner is appointed by the board and shall maintain the office at the UNM School of Medicine. UNM Health Sciences Center shall provide physical space for the office. The Chief Medical Examiner shall receive a faculty appointment in the Department of Pathology of the University of New Mexico School of Medicine. Assistant Chief Medical Examiners and Medical Examiners are licensed physicians and shall be certified in forensic pathology by the

American Board of Pathology or have similar international qualifications within three years of hire. All Assistant Chief Medical Examiners and Medical Examiners shall receive faculty appointments in the Department of Pathology of the UNM School of Medicine.

## **FISCAL IMPLICATIONS**

House Bill 545 contains no appropriation.

The DOH states that the bill does not provide specifics on the type or amount of analytical work that the Scientific Laboratory Division of DOH would perform for the Office of the Chief Medical Examiner. With no definition of limits to the work that the Scientific Laboratory Division of the Department of Health will perform for this separate agency, and no budget assigned to either the Office of the Chief Medical Examiner or the Scientific Laboratory Division to support the analytical work of the Scientific Laboratory Division for the Office of the Chief Medical Examiner, the bill would imply that the Office of the Chief Medical Examiner would have unlimited access to the resources of the Department of Health Scientific Laboratory Division for its work.

## **SIGNIFICANT ISSUES**

The HED notes that:

Forensic pathology services are currently under the jurisdiction of the Office of the Medical Investigator (OMI). OMI was created by the New Mexico State Legislature in 1972 and became operational in 1973. Replacing the county coroner system, the OMI was tasked with investigating all reportable deaths occurring in New Mexico, to subsequently determine the cause and manner of death in such cases, and to provide formal death certification.

The OMI is designated as a special program within the Department of Pathology at the University of New Mexico School of Medicine. A Board of Medical Investigations comprised of the Dean of the UNM School of Medicine, the Chief of the New Mexico State Police, the Secretary of Health and Environment Department, the Chairman of the New Mexico Thanatopractice Board and the Chairman of the New Mexico Indian Affairs Commission was established to oversee and develop policy. The Board appoints the Chief Medical Investigator, a physician licensed in New Mexico, trained in Pathology and Forensic Medicine, who has responsibility for operations. The program operates out of a central office located in the UNM Health Sciences Center (UNM HSC) in Albuquerque, New Mexico.

UNM states that the bill updates the authority, scope and function of the Office of the Medical Investigator to meet current national medicolegal death investigative standards and clarifies the role of the office in supporting the state's public safety and public health. It also clarifies the qualifications of medical examiners and investigators, identifies the fees that can be charged by the office, states the processes for scene investigations, autopsies, exhumations, and disposition of bodies, remains and property. It identifies a process for individuals to appeal determinations of cause and manner of death. The current statutes do not fully encompass the standards for good medicolegal death investigation and represent a transition from a coroner system to a medical examiner system in the early 1970s. Since that time the office has evolved to become fully

centralized. The current statute lacks clarity about the office's support for the state's public health. In addition the office has been hampered in disposing of property in certain cases because of a lack of statutory guidance

According to DPS, Section 11 presents a number of issues as it relates to criminal investigations. Section 11 E states "the office may seize and take custody of all other evidence that is pertinent to an investigation and that is not taken by law personnel." This may become problematic if law enforcement inadvertently overlooks a piece of evidence and needs to return to retrieve it. The second area is Section 11 G which states, "Law enforcement personnel shall not obstruct or bar office personnel from access to and retrieval of a body. The office may bar law enforcement personnel from access to the body." This is problematic because evidence may be present between the boundary of the crime scene and the body which would be disturbed if personnel are allowed entry prior to it being processed by an expert. It would also severely restrict law enforcement by denying them access to the body because evidence may be present near the body which would be beneficial for a successful prosecution of a case.

The DPS would propose the following changes to House Bill 545 to address these concerns:

Amend Section 11 E to state: "The office may seize and take custody of all other evidence that is pertinent to an investigation after consultation with the investigating law enforcement personnel that it is not needed by them."

Amend Section 11 G to state: "Law enforcement personnel shall not obstruct or bar office personnel from access to and retrieval of a body unless access by the office would be detrimental to preservation of evidence which may be located between the perimeter of the crime scene and where the body is located. Law enforcement personnel shall not move the body or collect evidence from the body unless authorized by the office."

Add language that reports generated by the OMI on determination of death which are used by law enforcement for criminal investigations shall be provided to law enforcement upon request at no charge.

The IAD states that:

The Board would also be charged with adopting and promulgating fees related to the duties of the office. Most significantly for tribes in New Mexico, the rates for autopsies and external examinations "outside the jurisdiction of the office" are not to exceed seven thousand dollars (\$7,000) and two thousand dollars (\$2,000), respectively. Outside the jurisdiction means "all human death within the exterior boundaries of New Mexico, exclusive of sovereign tribal domains or federal military or medical installations." This has been an issue in the past for many tribes in New Mexico who have been required to pay for autopsies for services performed within "tribal domains" while non-Indian state citizens were not required to pay. As written, the Act does not prescribe any fees for autopsies and external examinations within the jurisdiction of the Office.

Section 12 provides that post-mortem examinations and autopsies on an Indian decedent "shall be conducted as necessary and may be performed over the implicit or explicit objections, including cultural or religious objections, of the designated representative or other parties." The final decision shall rest with the Chief Medical Examiner. In these

cases, the forensic pathologist conducting the autopsy or examination in cases where the tribal next of kin or tribal representative does not give consent (defined as “forensic autopsy”) or objects, shall make reasonable efforts to explain why the procedures are necessary and “take into consideration the cultural or religious needs identified by the designated representative or tribal representative.”

Section 17 clarifies the discretion of the Office in guiding the examiner or pathologist by providing a requirement of “due diligence to avoid an autopsy and shall use the least invasive means possible to satisfy the office’s duties in conducting the investigation” when the decedent is found to be a member of an Indian nation, tribe or pueblo. In cases where a forensic autopsy is performed, a tribal law enforcement officer shall be present but shall not be allowed to interfere with procedure. Section 17 also provides that the Office request that each Indian nation, tribe or pueblo designate a tribal representative that the office may contact.

The AOC notes that Section 24-11-10, repealed by HB 545, provided a petty misdemeanor penalty for *willfully and without good cause* neglecting or refusing to report a death. Section 18 of HB 545 provides a misdemeanor penalty for failing to report the sudden, unexpected, violent or nonnatural death or finding a body. While there is no mention of willful conduct or good cause to trigger the penalty under HB 545 - apparently expanding the circumstances under which a person incurs a criminal penalty - there is apparently a restriction placed upon the necessary reporting by requiring only the reporting of a sudden, unexpected, violent or nonnatural death or a found body, as opposed to being required to report *any* death under 24-11-10. The same discussion applies to the increased penalty for touching, disturbing or removing a dead body or an article on or near a body, and disturbing the surroundings of a body that is required by law to be reported to the OCME, as HB 545 does not require the touching, removing or disturbing to be willful and unnecessary as in the repealed Section 24-11-10.

GH/mc