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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/28/13

**SPONSOR** Rue/Brown **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** DFA Cost-Benefit Analysis of Agency Rules **SB** 533

**ANALYST** Boerner

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate: See Fiscal Implications	Indeterminate: See Fiscal Implications	Indeterminate: See Fiscal Implications	Recurring	DFA Operating Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
 Department of Public Safety (DPS)  
 Children, Youth and Families Department (CYFD)  
 Human Services Department (HSD)  
 Office of the State Engineer (OSE)  
 Energy and Natural Resources Department (EMNRD)  
 Economic Development Department (EDD)  
 Taxation and Revenue Department (TRD)  
 New Mexico Corrections Department (NMCD)  
 Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

Senate Bill 533 requires the DFA to perform a cost-benefit analysis for each proposed rule and report the findings and recommendations to the governor and the Legislative Finance Committee (LFC) (as well as post the findings on the state's Sunshine Portal). Cost-benefit analyses for rules with an impact of at least \$500 thousand shall be used for fiscal analyses and performance budgeting for the applicable agency subdivision.

The bill describes requirements for what shall be included in the analysis (such as impact to consumer protection), what information can be used, how the information can be obtained and

requirements for confidentiality. A cost-benefit analysis as described in this bill is a public document.

The bill requires that a retroactive cost-benefit analysis be performed for any rules adopted after December 31, 2012.

Finally, exempted from this bill are any amendments to the rule that are technical in nature with no substantive effect on the existing rule; an agency must submit a statement to the department when a rule meets this condition.

## **FISCAL IMPLICATIONS**

This bill does not contain an appropriation to support what likely represents a significant increase in workload for the DFA. As described below in detail (see “Significant Issues”), the economists in the DFA Economic Analysis Unit are likely the best qualified for the required cost-benefit analyses; however, there are currently two such economists on staff and they are tasked with technical and demanding analyses related to revenue estimates, tax expenditures and other fiscal-related responsibilities. Cost-benefit analysis related to every new applicable rule would require an expansion of qualified FTE and supporting resources.

## **SIGNIFICANT ISSUES**

The DFA has two economist FTEs with a host of existing duties and ongoing requests, including regular participation in the consensus revenue group, tax expenditure reporting as required by Executive Order 2011-071, and other projects at the request of interim committees and the Governor’s office. Many of the provisions required by this proposal would be difficult to measure due to insufficient data, limited time and resources, and estimation limitations. This proposal would take substantial time and effort away from existing duties and activities, and may compromise quality.

While the Economic Analysis Unit at the DFA is the most likely source of such analysis, the economists on staff will not have the same level of institutional knowledge and expertise as the relevant agency in assessing agency rules. The budget analysts may also lack the resources and expertise to properly assess proposed rules.

State rules can include building codes, air quality standards, tax codes, public assistance regulations, and public health regulations, to name but a few, and can include everything from “manufacture of dog food” (21.33.2.17 NMAC) to “policy on exhibitions at the Museum of New Mexico” (4.51.13.8 NMAC). Attached is a list of approximately 30 rules with effective dates after January 1, 2013 but prior to January 31, 2013. If other months are similar to January, the DFA could be analyzing upwards of 300 rules each year. Note that there are currently 22 titles of rules under the New Mexico Administrative Code, with hundreds of chapters.

## **OTHER SUBSTANTIVE ISSUES**

The rulemaking process already includes a promulgation process designed to ensure transparency and allow stakeholder input. Agencies must publish a notice of rulemaking in the New Mexico Register and in a newspaper of general publication. The notice explains generally what new rules or amendments to or repeals of existing rules are proposed, and provides ways

for the public to comment on them. Usually agencies will have a public meeting to discuss the rule. After publication and on its defined effective date, a rule is considered to be administrative law unless it is successfully challenged in court.

If a rule must be made effective quickly and cannot wait for the promulgation process to take place, statute provides for the filing of emergency rules. Such rules can be effective immediately on filing with the Administrative Law Division, but only remain in effect for 30 days unless published in the New Mexico Register. It is possible a sufficient cost-benefit analysis cannot be completed in a timely manner under such circumstances.

### **PERFORMANCE IMPLICATIONS**

It is unclear what the performance implications may be for state agencies because the bill does not include a timeframe for when a state agency provides a proposed rule to the DFA, whether it must wait to adopt a rule until the DFA has completed a cost-benefit analysis, how it provides verified data to the DFA if received, and whether the agency is required to take action regarding the results of the cost-benefit analysis.

### **ALTERNATIVES**

Each agency could be required to produce cost-benefit analyses as described in this bill with review and recommendations provided by the DFA.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

New rules will be adopted within the current rulemaking and promulgation process as described above in “Other Substantive Issues.”

CEB/svb