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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/2015

SPONSOR Sanchez, M LAST UPDATED 3/3/2015 HB \_\_\_\_\_

SHORT TITLE Cabinet Secretary Evaluation Act SB 419/aSRC

ANALYST Chabot

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Significant	Significant		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Aging and Long-Term Services Department (ALTSD)  
 Department of Game and Fish (DGF)  
 Economic Development Department (EDD)  
 New Mexico Department of Transportation (NMDOT)  
 Public Defender Department (PDD)  
 State Personnel Office (SPO)

### SUMMARY

#### Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Bill 419 strikes the provision that the governor shall notify a minimally effective or ineffective cabinet secretary within 10 days of receiving a written report on observations and evaluations conducted as part of the performance growth plan as to whether the cabinet secretary will be dismissed or demoted. Instead the amendment requires the Senate Rules Committee to hold hearings on a cabinet secretary rated as minimally effective or ineffective. The amendment also strikes the provision that a cabinet secretary of a department graded D or F for two successive years shall be dismissed.

#### Synopsis of Original Bill

Senate Bill 417 establishes the Cabinet Secretary Evaluation Act with the purpose of establishing uniform procedures for conducting annual evaluations of the secretaries of each cabinet department based upon expertise and experience of the staff, ability of the department to meet its performance measures, complaints received, attendance record of employees, and responsiveness of department staff to clients and residents. In addition each cabinet department will be ranked

on its performance and that of the secretary. These rankings will be published on the agency's and the governor's web pages.

By September 1, 2015, the state personnel office will select experts in state and local government to assist in developing subject area tests to be used to evaluate a cabinet secretary appointee's abilities. All test results will be provided to the Senate Rules Committee and will become public record. In addition, as early as possible but no later than September 1, 2015, the State Personnel Board (SPB) will select a professionally derived effectiveness evaluation system to measure the performance of each cabinet secretary. The secretary will be observed by a certified observer (defined as a person with expertise and experience in one or more subject areas of responsibility of the department and has experience in administering governmental departments who has completed observation and evaluation training and is certified by SPB) at least annually. There are five performance ratings: exemplary, highly effective, effective, minimally effective, and ineffective.

The evaluation will be based on the following:

1. 50 percent on competence, performance and growth of department employees;
2. 15 percent on meeting performance measures in the General Appropriation Act and mission goals for the year defined by the governor;
3. 10 percent from standardized responses from employees and clients; and
4. 25 percent based on the department's grade.

The governor, cabinet secretaries and management analysts appointed by SPO will develop the grading program. Agencies will be assigned letter grades A through F and the grades published on the governor's website.

Cabinet secretaries rated minimally effective or ineffective may be given a notice of dismissal by the governor. If not dismissed, the governor will place the cabinet secretary on a performance growth plan and will be observed and evaluated at least four times during the next 90 days. The evaluator will determine whether the performance deficiencies have been corrected and forward a written report to the governor. The governor will notify the cabinet secretary in writing of a decision to dismiss or demote the secretary.

A cabinet secretary who is rated minimally effective or ineffective or the agency receives a D or F for two successive years shall be dismissed.

Each cabinet department will report annually to the Legislature through the Legislative Finance Committee and other appropriate committees on the results of the cabinet secretary evaluations.

## **FISCAL IMPLICATIONS**

SPO states "There would be a significant fiscal impact to both the SPB and SPO in order to hire subject matter experts to develop the testing and evaluation systems for each executive agency, as required by Section 4(B), and to implement the testing and evaluating requirements contained in SB419. Also, there would be an ongoing fiscal impact to the SPB and SPO because additional FTE would be necessary to comply with the annual requirements of SB419. Despite this significant impact, there is no appropriation to the SPB or SPO."

## SIGNIFICANT ISSUES

The purpose of the bill is to develop a uniform, objective evaluation system for determining cabinet agencies and respective cabinet secretary's effectiveness in meeting the needs of the people of New Mexico. According to the bill the emphasis is on "leadership and employee effectiveness and providing the opportunity to acknowledge excellence by replacing the current system that emphasizes political favoritism over expertise, experience and competence."

SPO provided the following as the executive agency response to the bill.

"Our analysis of this legislation indicates that it is unconstitutional for a number of reasons, but primarily as it relates to usurping executive power set forth in Article V, § 5 of the New Mexico State Constitution. This is due to the fact that the bill infringes upon the prerogative of the state's chief executive to make hiring decisions relating to the gubernatorial appointees who, under the law, clearly and explicitly serve at her pleasure and are statutorily responsible to the Governor for the operation of their respective departments, NMSA 1978, §§9-1-4 & 9-1-5.

"Second, this legislation is further flawed because it assigns responsibility for matters relating to exempt, at-will employees to the State Personnel Office and State Personnel Board. This violates the Personnel Act. Those entities oversee employment matters relating to the state's classified workforce only, NMSA 1978, §§10-9-4(B) & 10-9-10. Again, this is due to the fact that employment decisions regarding Governor-exempt employees are, as the label implies, made by the Governor herself.

"Finally, the exempt, at-will employees targeted by this legislation are indeed evaluated regularly by the person to whom they answer – the Governor. When changes are warranted, they are made. And, without question, the Governor is also evaluated by the voters to whom she must answer, and the results of the past election speak for themselves concerning their high opinion of the job she is doing."

GAC/aml/bb/aml