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FISCAL IMPACT REPORT

ORIGINAL DATE 6/19/20

SPONSOR Baca LAST UPDATED _____ HB _____

SHORT TITLE Public Health Order Terminations SB 19

ANALYST Klundt

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 19 (SB19) proposes to amend the Public Health Act such that any public health order issued pursuant to the Emergency Powers Code that closes public places or forbids or limits gatherings of people would automatically terminate 14 days after being issued and may not be renewed, or amended, or a new order on the same subject matter issued, except by joint resolution of the Legislature in regular, special, or extraordinary session.

This bill contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

No fiscal implications identified at this time.

SIGNIFICANT ISSUES

DOH reported, “Pursuant to the Public Health Act, Chapter 24, Article 1 NMSA (2018), the New Mexico Department of Health (NMDOH) has authority to, inter alia:

- “supervise the health and hygiene of the people of the state and identify ways to evaluate and address community health problems;”
- “investigate, control and abate the causes of disease, especially epidemics, sources of mortality and other conditions of public health;”
- “establish, maintain and enforce isolation and quarantine;”
- “close any public place and forbid gatherings of people when necessary for the protection of the public health;”
- “respond to public health emergencies and assist communities in recovery;”
- “bring action in court for the enforcement of health laws and rules and orders issued by the department;”
- “maintain and enforce rules for the control of conditions of public health importance;”

Additionally, Chapter 24, Article 1, Section 15B states:

- “The secretary or a representative of the department whom the secretary designates may by public health order, temporarily isolate or quarantine a person or group of persons if delay in isolating or quarantining would significantly jeopardize the secretary's ability to prevent or limit the transmission to others of a threatening communicable disease.”

The proposal to amend the Public Health Act to automatically terminate a public health order that closes public places or limits gatherings would, in general, limit NMDOH’s ability to protect the public’s health appropriately. Specifically, this amendment would interfere with NMDOH’s ability to control the spread of COVID-19. Severe acute respiratory syndrome (SARS) coronavirus 2 (SARS-CoV-2) continues to spread (1). Although we still have limited information on the epidemiology of coronavirus disease (COVID-19), there have been multiple reports of superspreading events (SSEs) (2–4). (https://wwwnc.cdc.gov/eid/article/26/6/20-0495_article). Public health orders mandating social distancing, including the closure of public places and limitations on gatherings, constitute the sole means of mitigating transmission of the COVID-19 virus.”

The Office of the Attorney General noted, “SB 19 does not have a provision that repeals the governor’s inherent police power nor does it amend specific provisions in current law that authorize the issuance of public health orders.

The existing laws that would conflict with SB 19’s provisions and therefore require amendatory language include: NMSA 1978, § 24-1-3(E) (2017) (Department of Health has authority to “close any public place and forbid gatherings of people when necessary for the protection of the public health”); the Public Health Emergency Response Act, NMSA 1978, § 12-10A-5(A) (authorizing the governor to declare a state of public health emergency “upon the occurrence of a public health emergency”); and the Public Health Act, NMSA 1978 § 24-1-3. (authorizing the Department of Health to close any public place and forbid gatherings of people when necessary for the protection of the public health.)

It is important to note that current case law acknowledges the governor’s authority to declare and enforce orders to protect the public health. *Balderas v. Hicks*, NO. S-1-SC-38279, May 28, 2020. See also *Legacy Church v. Kunkel*, April 17, 2020--- F.Supp.3d ----2020 WL 1905586, D-NM

(finding that the April 11, 2020 public health emergency order did not violate the First Amendment rights of church members seeking to congregate in numbers exceeding limits on mass gatherings.)”

TECHNICAL ISSUES

The Office of the Attorney General also noted SB19 does not address the current public health emergency orders still presently in place.

OTHER SUBSTANTIVE ISSUES

DOH also reported the agency believes, “SB19 seeks to grant certain powers to the Legislature that are reserved specifically to the Executive under the New Mexico Constitution. “The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.” Art. III, § 1, NM Constitution. “The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed.” *Id.* at Art. V, § 4.

SB19 provides the Legislature with the ability to approve public health orders issued by the Executive (NMDOH) that are longer than 14 days. This may have the effect of significantly interfering with and restraining the Governor’s ability to execute the laws of the state.”

KK/rl