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FISCAL IMPACT REPORT

SPONSOR Zanetti DATE TYPED 2/11/05 HB HM 23

SHORT TITLE Presidential Supreme Court Nominee Support SB _____

ANALYST Hanika-Ortiz

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | NFI | | | | |

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney Generals Office (AGO)

SUMMARY

Synopsis of Bill

HM 23 makes a request on behalf of the House of Representatives of the State of New Mexico for the state's United States Senators to "quickly" confirm all nominations to the United States Supreme Court by President George W. Bush. HM 23 implies the New Mexico House of Representatives support of President George W. Bush's commitment to appoint federal judges who will strictly interpret the United States Constitution. The memorial is written to voice concerns the New Mexico House of Representatives has over a perceived approach used by a few federal court judges and United States Senators to slow down the nomination process.

Significant Issues

The AGO has the following comment:

The President has authority to "nominate" Justices of the United States Supreme Court, and their appointment is subject to the "advice and consent" of the United States Senate under Article II, Section 2 of the United States Constitution. There is no provision, direct or indirect, for the state legislature to narrow, focus or have an impact upon the exercise of the Senate's advice and consent with regard to judicial nominees. It appears to violate the constitutional requirement of ad-

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vice and consent to direct New Mexico's Senators to confirm in a speedy fashion whatever nominations the President sends to the Senate.

With the deterioration in Chief Justice William Rehnquist's health, speculation has abounded over potential nominees.

When asked about the kind of justices he would appoint to the Supreme Court, President George W. Bush said, "I would pick people that would be strict constructionists. We've got plenty of lawmaker in Washington, D.C. Legislators make law. Judges interpret the Constitution." Following is a list of potential nominees that have been mentioned in various news accounts.

J. Michael Luttig – 4th Circuit Court of Appeals
J. Harvie Wilkinson III – 4th Circuit Court of Appeals
Samuel A. Alito, Jr. – 3rd Circuit Court of Appeals
Janice Rogers Brown – California Supreme Court
Miguel Estrada – Court of Appeals for the District of Columbia
Emilio Miller Garza – 5th Circuit Court of Appeals
Alberto R. Gonzales – Attorney General
Edith Jones – 5th Circuit Court of Appeals
Theodore B. Olson – Former Solicitor General
John G. Roberts – Court of Appeals for the District of Columbia
Larry Thompson – Brookings Institution

PERFORMANCE IMPLICATIONS

As of December 2004, there has not been a vacancy on the bench for over ten years.

ADMINISTRATIVE IMPLICATIONS

The AGO reports that Senate Rule XXXI builds in some delay in the consideration of such nominations, as by preventing a vote on the nomination the same day it is received and requiring that the outcome not be sent to the President until two days after the vote, to give any Senator voting in the majority the opportunity to move for reconsideration. Thus, depending on the intent of the Memorial's use of the word "quickly" there may be some conflict between the Resolution and the Senate Rules.

OTHER SUBSTANTIVE ISSUES

The Supreme Court of the United States has ultimate judicial authority within the United States to interpret and decide questions of federal law. The justices (currently nine) are appointed for life by the President of the United States and confirmed by majority vote by the Senate. Its jurisdiction is limited by Article III of the U.S. Constitution to "cases" and "controversies" arising under federal law:

When deciding a case, each justice can write his or her own opinion; all these statements are made public. There is usually one opinion for the majority of the justices, which is designated the "Opinion of the Court". In addition to the majority opinion, there are often concurring and dissenting opinions. Usually, the majority opinion is signed by its author, but sometimes the court will issue an unsigned opinion "per curiam", particularly if it summarily reverses a lower court's

decision without full briefing or oral argument. The majority opinion is usually preceded by a summary called a “syllabus”, which concisely summarizes the case and the decision. The syllabus is accompanied by a disclaimer that it is prepared by the reporter of decisions and does not constitute a part of the court’s opinion.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The United States Senators will not receive a request from the New Mexico House of Representatives to move quickly to confirm all nominations to the United States Supreme Court by President George W. Bush.

AHO/lg